

रजिस्टर्ड नं० पी०/एस० एम० 14.



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश शासक द्वारा प्रकाशित

शिमला, शनिवार, 17 जनवरी, 1987/27 पौष, 1908

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171002, 24 नवम्बर, 1986

संख्या 3-14/86-ई. एल. एन.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/एच. पी. एल. ए./8/85, दिनांक 4 नवम्बर, 1986, हिन्दी रूपांतर सहित, जिसमें हिमाचल प्रदेश उच्च न्यायालय, का अर्जी संख्या 8 दिनांक 4 अगस्त, 1986 पर निर्णय है, सर्वसाधारण की सूचना के लिए प्रकाशित करता हूँ।

आदेश सहित,

अतार सिंह,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

2517-राजपत्र/86-17-1-87—1,251.

(153)

मूल्य: 20 पैसे।

नियन्त्रक, मृद्रण तथा लेखन सामग्री हिमाचल प्रदेश, शिमला-5 द्वारा मुद्रित तथा प्रकाशित।

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashok Road, New Delhi-110001,

Dated the 4th November, 1986/Kartika 13, 1908 (Saka)

No. 82/HP-LA/8/85.—In pursuance of section 106 of the Representation on the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment dated the 4th August, 1986 of the High Court of Himachal Pradesh at Shimla, in Election Petition No. 8 of 1985, along with its orders dated the 20th June, 1985 and 4th July, 1985, referred to therein.

By order,
BALWANT SINGH,
Under Secretary,
Election Commission of India.

भारत निर्वाचन आयोग

अशोक मार्ग, नई दिल्ली-110001,

4 नवम्बर, 1986

तारीख : _____

कातिक 13, 1908 (शक)

अधिसूचना

संख्या 82/हि०प्र०वि०स०/8/85.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1985 की निर्वाचन प्रज्ञा संख्या 8 में हिमाचल प्रदेश उच्च न्यायालय शिमला के तारीख 4 अगस्त, 1986 का निर्णय उसमें संदर्भित उसके तारीख 20 जून, 1985 और 4 जुलाई, 1985 के आदेशों सहित एतद्वारा प्रकाशित करता है।

आदेश से,
बलवन्त सिंह,
अवर सचिव,
भारत निर्वाचन आयोग।

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Election Petition No. 8 of 1985 and
Election Petition No. 9 of 1985

Krishan Kumar Kaushal

vs.

Date of decision : August 4, 1986.
Ram Lal Thakur and others.

versus

Dila Ram
Coram

Ram Lal Thakur and others.

The Hon'ble Mr. Justice V. P. Gupta J.

Whether approved for reporting ? Yes

For the Appellant(s)/Petitioner(s)

Pt. Om Parkash and Shri R. K. Garg with Shri Rajeev
Sharma, Advocates.

For the Respondent(s)

Shri Inder Singh, Advocate, with Shri Bhawani Singh and
R. K. Handa Advocates.

V. P. GUPTA, J.

After the dissolution of the Himachal Pradesh Legislative Assembly on January 23, 1985, fresh elections were held on March 5, 1985 for 20-Kot Kehloor constituency (hereinafter the constituency), District Bilaspur, Himachal Pradesh. According to the notification, the following schedule for this election was issued:—

- | | |
|--|-----------|
| (i) Last date for filing nomination papers | 8-2-1985 |
| (ii) Scrutiny and acceptance/rejection | 9-2-1985 |
| (iii) Last date for withdrawals | 11-2-1985 |
| (iv) Date of polling | 5-3-1985 |
| (v) Results after counting were declared on 6-3-1985 | |

The parties in election petition No. 8 of 1985 and respondents in election petition No. 9 of 1985 alongwith S/Shri Bachittar Singh and Daulat Ram Sankhyan filed their nomination papers for contesting the election from this constituency. The nomination papers of Shri Bachittar Singh were rejected by the returning officer on 9-2-1985 on the ground that "the candidate has not produced the electoral roll of the relevant part, that is, part No. 49 of 23-Gherwin Assembly constituency or a certified copy of the relevant part pertaining to the name entered at serial No. 719, nor has produced the same at the time of scrutiny as required under section 33(5) of the Representation of People Act, 1951".

Shri Daulat Ram Sankhyan withdrew his candidature before the last date fixed for withdrawals. In this manner Shri Krishan Kumar Kaushal (a nominee of Communist Party of India), Shri Ram Lal [nominee of Congress (I) Party] and Shri Daulat Ram (nominee of Bharatiya Janata Party) were contestants in the election.

The results were declared on March 6, 1985 and Shri Ram Lal Thakur having polled 11,183 votes was declared elected. Shri Krishan Kumar Kaushal secured 10,749 votes and Shri Daulat Ram secured 3,474 votes. In election petition No. 8 of 1985 Shri Krishan Kumar Kaushal has challenged the election of Shri Ram Lal under sections 81, 84, 100 and 101 of the Representation of People Act, 1951 (hereinafter the Act) and has prayed that the election of Shri Ram Lal be declared void and he be declared to be duly elected from the constituency.

In election petition No. 9 of 1985 Shri Dile Ram claiming himself to be an elector in the constituency has challenged the election of Shri Ram Lal Thakur under sections 81, 100 and 101 of the Act claiming that the election of Shri Ram Lal Thakur be declared as void and be set aside.

As both the election petition No. 8 of 1985 and 9 of 1985 are in respect of the same election and issue No. 1 is common in both the petitions, therefore, under section 86(3) of the Act it is just and proper that both these election petitions be decided by one judgment. In these circumstances I am deciding both the petitions by this single judgment.

In both the election petitions nos. 8 of 1985 and 9 of 1985, it is alleged that Shri Bachittar Singh was an elector in 23-Gherwin (reserved) constituency and had filed his nomination papers for 23-Gherwin constituency and also for this constituency. Both 23-Gherwin and 20-Kot Kehloor constituencies are adjacent to each other and are in district Bilaspur. The nomination papers of Shri Bachittar Singh were accepted for 23-Gherwin constituency but his nomination papers were rejected improperly for this constituency, although at the time of scrutiny Shri Bachittar Singh had requested the returning officer that the electoral rolls of 23-Gherwin constituency were lying on his table and the returning officer could verify the fact of his (Bachittar Singh) being an elector at serial No. 719 of part 49 of 23-Gherwin constituency. The returning officer refused to

do so on the plea that either a certified copy of the electoral roll was to be attached with the nomination papers or the same was to be produced by the candidate at the time of scrutiny. The returning officer refused to look into the electoral rolls which were lying on his table. Shri Bachittar Singh also requested the returning officer for grant of time till next date or even for some hours to produce the necessary certified copy, but this request was not accepted. It is thus alleged that the nomination papers of Shri Bachittar Singh for this constituency were improperly rejected by the returning officer and the entire election stands vitiated. The election of Shri Ram Lal should, therefore, be set aside.

In election petition No. 8 of 1985, besides the aforesaid ground, it is further alleged that two notified polling stations were illegally shifted to benefit the prospects of Shri Ram Lal, respondent No. 1 and to cause harm to the petitioner i.e. Shri Krishan Kumar Kaushal. This shifting of the polling stations was illegal and un-authorised.

Further on the polling day, immediately before the start of the polling, supporters of Shri Ram Lal (hereinafter respondent No. 1) with his prior consent, attacked the supporters of Shri Krishan Kumar Kaushal (hereinafter petitioner) and created a terror amongst the voters. The supporters of respondent No. 1 captured the polling booth of the petitioner and also spread false rumours that the supporters of the petitioner had stabbed a supporter of respondent No. 1. This false rumour materially affected the result of the election.

The petitioner further alleges that many validly polled votes in favour of the petitioner were declared invalid while several invalid votes cast in favour of respondent No. 1 were declared valid in spite of the protests.

The request for a re-count was not allowed and the counting was not done in a proper manner. The procedure of counting is also challenged and it is alleged that the counting was illegal and dishonest to favour respondent No 1.

It is further alleged that Dr. Sukh Ram Chauhan, a Gazetted Officer, canvassed for respondent No. 1 in different villages from house to house at the instance of respondent No. 1. The petitioner has alleged that respondent No. 1 has indulged in corrupt practices and has also acted in violation of the Act and the rules due to the non-compliance with the provisions of the Act and the conduct of election rules and the election of respondent No. 1 should be declared to be void and illegal.

In election petition No. 8 of 1985, the respondent No. 1 in his written statement has denied the various allegations and has alleged that the election was fair and proper in accordance with the provisions of the Act and the rules. He also raised some preliminary objections. Shri Daulat Ram (hereinafter respondent No. 2) admitted the petitioner's claim in his written statement.

The following preliminary issues were framed on 29-5-1985 in election petition No. 8 of 1985:—

1. Whether the affidavit filed by the petitioner in the prescribed form in support of the allegations of corrupt practices and the particulars thereof is defective? If so, its effect? OPR-1
2. Whether the election petition does not contain concise statement of the material facts on which the petitioner is claiming the relief, as alleged? OPR-1
3. Whether full particulars of the corrupt practices alleged by the petitioner, as are required under section 83(1)(b), have not been given by the petitioner? If so, its effect? OPR-1.
4. Relief.

Issues No. 1 and 3 were decided vide order dated June 20, 1985 and issue No. 2 was decided

against respondent No. 1 *vide* order dated July 4, 1985. Thereafter on merits, the following issues were framed on 18-7-1985:—

1. Whether the rejection of the nomination paper of Bachittar Singh for 20-Kot Kehloor constituency, district Bilaspur by the returning officer *vide* Annexure P.C. was improper, illegal and void as alleged in the petition? If so its effect. OPP.
2. Whether the change in the polling station was unauthorised and illegal and in violation of the rules and the Act as alleged in paras 10 to 12 of the petition? If so, its effect. OPP.
3. Whether respondent No. 1 has committed a corrupt practice under section 123(2) of the Representation of People Act, 1951 as alleged in paras 13 and 14 of the petition? If so its effect. OPP.
4. Whether the respondent No. 1 has committed a corrupt practice under section 123 (7) of the Representation of People Act, 1951 as alleged in paras 18 and 19 of the petition? If so its effect. OPP.
5. Whether the counting of the votes was irregular, illegal as has been alleged in paras 15 to 17 of the petition and the same amounted to non-compliance with the provisions of the Constitution or the Representation of People Act or any rules or orders made under the Representation of People Act? If so, with what effect. OPP.
6. In case issues Nos. 2 and 5 are proved in favour of the petitioner, then whether the result of the election, in so far as it concerned respondent No. 1, has been materially affected as alleged in the petition? OPP.
7. Relief.

In election petition No. 9 of 1985, the respondent No 1 in his written statement has challenged the *locus-standi* of Shri Dile Ram to file the election petition and has alleged that Shri Dila Ram has no cause of action to maintain the election petition. It is alleged that the election petition does not contain a concise statement of material facts. On merits, the allegations of Shri Dila Ram have been denied by respondent No 1. It is also alleged that the nomination papers of Shri Bachittar Singh were correctly rejected by the returning officer.

Shri Daulat Ram and Krishan Kumar Kaushal in their separate written statements have admitted the allegations of Shri Dila Ram.

In election petition No. 9 of 1985, on the pleadings of the parties, the following preliminary issue was framed on 29-3-1985:—

Whether the election petition does not contain a concise statement of the material facts on which the petitioner is claiming the relief, as alleged? OPR-1.

This issue was decided against respondent No. 1 *vide* my orders dated July 4, 1985.

Thereafter the following issues were framed on merits on July 18, 1985:—

1. Whether the rejection of the nomination paper of Shri Bachittar Singh *vide* Annexure P.C. for 20-Kot Kehloor constituency of District Bilaspur by the returning officer was improper, illegal and void, as alleged in the petition? If so, its effect. OPP.
2. Relief.

Issue No. 1 in E1. P. No. 8 of 1985 and 9 of 1985:—

In both the petitions it is alleged that Shri Bachittar Singh filed his nomination papers from two constituencies namely 20-Kot Kehloor and 23-Gherwin (SC) constituency. At the time of the scrutiny the returning officer accepted the nomination papers of Shri Bachittar Singh with respect to 23-Gherwin (SC) constituency but improperly and illegally rejected the nomination papers for 20-Kot Kehloor constituency.

Shri Bachittar Singh had requested the returning officer to verify the factum of his being entered at serial No. 719 of part 49 of 23-Gherwin assembly constituency from the electoral rolls lying on his table, but his request was not accepted. Shri Bachittar Singh also requested the returning officer to grant him time till next day or even for some hours to produce the certified copy but the returning officer did not accept his request either.

Shri Daulat Ram Sharma (respondent No. 2) admits these allegations in both the petitions.

Respondent No. 1 (Shri Ram Lal Thakur) the real contesting respondent, has however, denied these allegations. He admits that Shri Bachittar Singh filed his nomination papers for 20-Kot Kehloor constituency but the same were rightly rejected in view of the mandatory provisions of sub-section (5) of section 33 of the Act because Shri Bachittar Singh had not annexed the copy of the electoral rolls of the constituency or the relevant part thereof or a certified copy of the relevant entry of such rolls in which his name existed before the returning officer. He does not admit that any request was made by Shri Bachittar Singh for seeking time to produce the necessary certified copy. He alleges that Shri Bachittar Singh never requested the returning officer to verify his serial No. from the electoral rolls of Gherwin assembly constituency and denied that the electoral rolls of Gherwin constituency were lying on the table of the returning officer.

The learned counsel for the petitioner and Shri Dila Ram contended that the scrutiny of the nomination papers for all the four constituencies of District Bilaspur was done on 9-2-1985 by Shri K. Lal, Deputy Commissioner, Bilaspur who was the Returning Officer for all the four constituencies of District Bilaspur. The electoral rolls of all the four constituencies of Bilaspur were available with the returning officer on 9-2-1985 and he could easily verify that Shri Bachittar Singh was a voter in 23-Gherwin constituency. The scrutiny of 23-Gherwin constituency was done earlier and the scrutiny for this constituency was done later. After acceptance of the nomination papers of Bachittar Singh from 23-Gherwin constituency it was improper and illegal for the returning officer to have rejected his nomination papers for this constituency. Shri Bachittar Singh had also given full particulars of his being a voter in 23-Gherwin constituency, which fact could be easily verified from the electoral rolls of 23-Gherwin constituency. The provisions of section 33 of the Act should have been construed liberally and the same were not mandatory. Even if the production of a copy was necessary, then the returning officer should have supplied the copy to Bachittar Singh and the nomination papers should not have been rejected. Reliance was placed on A.I.R. 1966 S.C. 1626 (*Ranjit Singh versus Pritam Singh and others*), A.I.R. 1984 S.C. 1513 (*Ganu Ram versus Rikhi Ram Kaundal and others*); A.I.R. 1968 S.C. 1179 (*Hira Singh Pal versus Madan Lal*), A.I.R. 1985 S.C. 847 (*Brij Mohan versus Sat Pal*) and A.I.R. 1958 Ker. 154 (*Rosama Ponose versus Bala Krishna Nayarn*).

The learned counsel appearing on behalf of respondent No. 1 contended that the provisions of section 33(5) of the Act were mandatory and the nomination papers of Shri Bachittar Singh were rightly rejected. According to the instructions on page 31 of the 'Hand Book for the Returning Officers' the nomination papers if not accompanied by a copy as required under section 33(5) of the Act have to be rejected. It was contended that the judgments relied upon by the petitioner's counsel were irrelevant and distinguishable and the election law was to be followed strictly. He placed reliance upon A.I.R. 1959 S.C. 93 (*Baru Ram versus Smt. Parsinni and others*), A.I.R. 1969 S.C. 359 (*Narbada Prasad versus Chhagan Lal and others*), A.I.R. 1974 S.C. 951 (*Parmar Himatsingh Jugat Singh versus Patel Harmanbhai Narsibhai*), A.I.R. 1979 S.C. 1143 (*Avadh Raj Singh versus Jugat Kishore*), A.I.R. 1985 S.C. 1073 (*Leela Krishan versus Mani Ram Gadara*), A.I.R. 1985 S.C. 847 (*Brij Mohan versus Sat Pal*), A.I.R. 1978 Del. 199 (*Bharat Bhushan versus Ved Parkash*), 20 E.L.R. 63 (*Chand Singh versus Shankar Lal*) and 29 E.L.R. 108 (*Khiali Ram versus Har Lal*) in support of his contentions.

I have considered the contentions of the learned counsel for the parties and have gone through the records of the case.

According to section 5(c) of the Act, if a person is an elector for assembly constituency in the State then he is qualified to be chosen to fill a seat in the Legislative Assembly of a State. Therefore, if Shri Bachittar Singh was an elector in 23-Gherwin assembly constituency, then he was qualified to file nomination papers for 20-Kot Kehloor constituency.

Section 33 of the Act deals with the presentation and requirement for a valid nomination. It reads as follows:—

“33. Presentation of nomination paper and requirements for a valid nomination:—

(1)	x	x	x	x	x	x	x
(2)	x	x	x	x	x	x	x
(3)	x	x	x	x	x	x	x

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed alongwith the nomination paper, be produced before the returning officer at the time of scrutiny.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper :

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.”

Section 35 deals with the notice of nomination and the time and place for their scrutiny.

Section 36 deals with the scrutiny of nomination, and it reads as follows:—

“36. *Scrutiny of nominations.*—(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his

own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—

- (a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—

Articles 84, 102, 173 and 191, Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

- (b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or
(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control :

Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid and affix it to his notice board."

It may be mentioned that in election petition No. 8 of 1985, the allegations are based upon the information received by Shri Krishan Kumar (petitioner) from Shri Shanker Singh. Shri Shankar Singh, however, has not been produced in this case and only the certified copies of the nomination papers filed by Bachittar Singh for 23-Gherwin (SC) constituency and 20-Kot Kehloor constituency (Ex. P-1 and P-2) alongwith a copy of the rejection order dated 9-2-1985 passed by the returning officer (Ex. P-3) have been produced. There is thus no evidence in election petition No. 8 of 1985 to prove that the nomination papers were rejected improperly or illegally

and the learned counsel for the petitioner Shri Krishan Kumar frankly and rightly admitted this fact. He, however, contended that evidence was available in election petition No. 9 of 1985. Both the election petitions have been tried separately but issue No. 1 is common in both the election petitions, therefore, under section 86(3) of the Act it is proper that this issue may be decided in El. P. No. 9 of 1985. Hence I am deciding issue No. 1 on the basis of the evidence produced in El. P. No. 9 of 1985 and all references under this issue are regarding evidence produced in election petition No. 9 of 1985.

Shri K. Lal, (PW 1) Deputy Commissioner Bilaspur, who was the returning officer, states that Shri Bachittar Singh filed his nomination papers Ex. PA for 23-Gherwin and Ex. P.B. for 20-Kot Kehloor constituencies. He accepted his nomination papers for 23-Gherwin constituency but rejected the same for 20-Kot Kehloor constituency, *vide* order passed on 9-2-1985 (Ex. PC). Shri Bachittar Singh also appended his signatures below the original rejection order. This witness states that the scrutiny of nomination papers of all the four constituencies of Bilaspur was done on 9-2-1985 but he was unable to say as to whether the scrutiny for 23-Gherwin constituency was done first and for 20-Kot Kehloor constituency last of all. He admitted that electoral rolls of all the four constituencies were lying on his table at the time of the scrutiny of the nomination papers. The date of scrutiny 8-2-1985 stated by the witness appears to be wrong because the scrutiny was actually done on 9-2-1985. The witness does not remember if Shri Bachittar Singh requested him to verify his being a voter in 23-Gherwin constituency from the electoral rolls lying on his table, but states that Shri Bachittar Singh never requested for time to produce a copy of the electoral rolls. He also states that he could not accept the nomination papers of Shri Bachittar Singh according to the executive instructions issued in the hand book.

Shri Shankar Singh (PW 3) states that he was present at the time of scrutiny of nomination papers being an authorised agent of Shri Krishan Kumar Kaushal (respondent No. 3 in petition No. 9 of 1985 and petitioner in El.P. No. 8 of 1985). Shri Bachittar Singh requested the returning officer to confirm the fact of his being an elector in 23-Gherwin constituency from the electoral rolls which were lying on his table and the nomination papers of Shri Bachittar Singh for which constituency had already been accepted. Shri Bachittar Singh also requested for time to produce the certificate regarding his being a voter but both these requests were not accepted. He denied the suggestion that Shri Bachittar Singh never made any requests.

Shri Rajinder Kumar (PW 4) was a candidate for 21-Sadar constituency Bilaspur and he states that he was present at the time of the scrutiny. He corroborates Shri Shankar Singh (PW 3) on all material points.

Shri Ram Lal (RW 1) respondent No. 1, states that no request was made by Shri Bachittar Singh for grant of time or for confirming the fact of his being a voter in 23-Gherwin constituency.

Shri Bachittar Singh (RW 2) who admittedly filed his nomination paper for both the constituencies states that he was not interested in contesting the election from 20-Kot Kehloor constituency and never requested the returning officer to confirm the fact of his being a voter in 23-Gherwin constituency. He also did not ask for grant of any time to produce the copy of the electoral roll.

He is a graduate and contested the election successfully in 1977. He remained a Cabinet Minister from 1977 to 1979 in the State of Himachal Pradesh. It appears from his statement that he was not keen to contest the election from 20-Kot Kehloor constituency. In fact, if he had been aggrieved then he could have early challenged the order of rejection of his nomination papers but from his conduct from the beginning it is proved that he never wanted to contest the elections from 20-Kot Kehloor constituency.

Dharam Lal (RW 3), Naib-Tehsildar elections states that Shri Bachittar Singh never requested the returning officer for grant of time to enable him to produce a copy and also never requested the returning officer to confirm the fact of his being a voter in Gherwin constituency from the electoral rolls of Gherwin constituency.

The evidence discussed above can only prove that the electoral rolls of all the four constituencies of District Bilaspur including the Gherwin constituency were available with the returning officer on 9-2-1985 (the date of scrutiny) but Shri Bachittar Singh was not keen to contest the election from Kot Kehloor constituency. Earlier also he was elected from Gherwin constituency and not from 20-Kot Kehloor constituency. For the present case, however, the main dispute is as to whether the rejection of the nomination papers of Shri Bachittar Singh was illegal or improper, or in other words, whether the provisions of section 33(5) of the Act are mandatory or not. If these provisions are not mandatory then the rejection would be improper and illegal because the returning officer himself could verify the fact of Shri Bachittar Singh being a voter from the electoral rolls of 23-Gherwin constituency which were available with him on 9-2-1985 because he was the returning officer for both 20-Kot Kehloor constituency and 23-Gherwin constituency.

In A.I.R. 1954 S.C. 210 (*Jagan Nath versus Jaswant Singh and others*) a Bench of five Judges of the Supreme Court observed as follows:—

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it.

It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected."

Similarly in A.I.R. 1954 S.C. 510 (*Rattan Anmol Singh and another versus Ch. Atma Ram and others*) a Bench of three Judges of the Supreme Court observed as follows:—

"The question therefore, is whether attestation is a mere technical or subsubstantial requirement. We are not able to regard it in that light. When the law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there."

It is further observed that section 36 is mandatory and enjoins the returning officer to refuse any nomination when there has been any failure to comply with any of the provisions of section 33.

The only jurisdiction the returning officer has at the scrutiny stage is to see whether the nominations are in order and to hear and decide objections. He cannot at that stage remedy essential defects or permit them to be remedied. It is true he is not to reject any nomination paper on the ground of any technical defect which is not of a substantial character but he cannot remedy the defect. He must leave it as it is, if it is technical and unsubstantial it will not matter. If it is not, it cannot be set right.

According to section 33(5) of the Act a candidate who is an elector of a different constituency is required to produce a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll and these copies can be filed at the time of the filing of the nomination paper or can be produced before the returning officer at the time of scrutiny.

According to section 33(4) of the Act the returning officer is required to satisfy himself that the names and the electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. Further no misnomer or incorrect description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or in accurate description or clerical, technical or printing error to be corrected and were necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper, shall be overlooked".

A hand book for returning officers has been issued from the Election Commission of India. Chapter V of this hand book deals with nominations. Para 6(g) of this Chapter deals with the preliminary examination of nomination papers and it reads:—

"(g) As each nomination paper is filed, you or the specified Assistant Returning Officer is required by law to examine it then and there from the technical stand point. But you are not to hold a formal scrutiny of any nomination papers at this stage. If the candidate is an elector in your constituency you should compare the entries in the nomination paper with the entries in the electoral roll relating to the serial number and name of the candidate and the proposer. If he comes from another constituency, you should compare the entries in the nomination paper with the entry relating to the candidate's name in the electoral roll of that constituency or of the relevant part thereof or a certified copy of such entry. The candidate is required by law to produce before you such electoral roll or the relevant part thereof or a certified copy of the relevant entries thereof [section 33 (5)]. Make sure that the electoral roll with which you make such comparison is the one currently in force for the constituency in either case.

As aforesaid, legally, the responsibility for producing documentary evidence or registration as elector in a different constituency rests entirely on the candidate; likewise, it is also his sole responsibility to take the oath or affirmation (referred to in paragraph 8 *infra*). However, the Commission considers that, in order to reduce the scope of rejection of nomination papers on these two grounds, the attention of the candidate should be drawn to these requirements at the time when his nomination paper is presented and is examined from the technical stand point as required in the preceding sub-paragraph, if the candidate has not already complied

with such requirements. This is best done by means of written memoranda in the following forms:

(Proformas of the forms are given)

Chapter VI of the hand book deals with scrutiny and it is stated that the scrutiny of nomination papers is an important quasi-judicial function.

Some grounds are given which are considered insufficient for rejection of nomination papers. But some grounds are given which are considered good for rejection of nomination papers. These grounds for rejection of nomination papers are in para 1 (j) which reads as follows:—

“Grounds for rejection of nomination papers:—

(j) You must reject a nomination paper, if :—

(i) to (xiv) x x x x x x

(xv) if the candidate is not an elector of the constituency for which he has filed nomination paper, he has neither filed the electoral roll of that constituency or the relevant part thereof or a certified copy of the relevant part of the electoral roll alongwith the nomination paper nor produced the same at the time of scrutiny [as required under section 33 (5)]. *The nomination paper must be rejected even if you are in possession of the electoral roll of that different constituency.*
(Emphasis supplied).

Thus according to the instructions issued to the returning officers by the Election Commission of India and the provisions of section 35 (5) of the Act, a candidate who is an elector of a different constituency is duty bound to produce a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll either at the time of the filing of the nomination paper or at the time of the scrutiny of the nomination paper and under section 36 (2) (b) of the Act the returning officer while examining the nomination papers at the time of the scrutiny is authorised to reject the nomination paper if there is a failure to comply with any of the provisions of section 33 of the Act. The non-production of relevant documents mentioned in section 33 (5) of the Act provides a penalty under section 36 (2) (b) of the Act and the nomination papers are liable to rejection. The provisions of section 33 (5) of the Act are, therefore, mandatory because non-compliance of these provisions leads to the rejection of the nomination papers. This view is also supported by some judgments of the Supreme Court.

In AIR 1959 S.C. 93 (supra) (a Bench of three Judges), Baru Ram was declared duly elected from Rajaund constituency in Karnal district. Smt. Parsinni challenged the election of Shri Baru Ram on the grounds of corrupt practices and also the returning officer had improperly rejected the nomination papers of Shri Jai Bhagwan. The Election Tribunal found that no corrupt practices were committed, but the nomination papers of Jai Bhagwan were improperly rejected and the election was thus set aside.

Baru Ram filed an appeal and the High Court while dismissing the appeal held that the rejection of the nomination papers of Shri Jai Bhagwan was proper but found that Baru Ram had committed corrupt practices.

An appeal was then filed in the Supreme Court and it was found that Baru Ram had not

committed any corrupt practices and the rejection of the nomination papers of Shri Jai Bhagwan was valid. The learned Judges observed in para 14 that:

“Section 33(5) requires the candidate to supply the prescribed copy and section 36(2)(b) provides that on his failure to comply with the said requirement his nomination paper is liable to be rejected. In other words, this is a case where the statute requires the candidate to produce the prescribed evidence and provides a penalty for his failure to do so. In such a case it is difficult to appreciate the relevance or validity of the argument that the requirement of section 33(5) is not mandatory but is directory because the statute itself has made it clear that failure to comply with the said requirement leads to the rejection of the nomination paper. Whenever the statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence it would be difficult to accept the argument that the failure to comply with the said requirement should lead to any other consequence.”

The appeal of Shri Baru Ram was accepted and the election petition filed by Shrimati Parsinni was dismissed.

In AIR 969 S.C. 375 (supra) (Two Judges) Shri Narbada Prasad was declared elected to Khategaon Legislative Assembly constituency. His election was challenged by an elector on two broad grounds, that is, firstly the nomination papers of Ram Kishan were wrongly rejected and secondly that corrupt practices had been committed by the returned candidate and his election agent. The election petition was accepted by the High Court on both the grounds. Shri Narbada Prasad filed an appeal in the Supreme Court. The Supreme Court held that the nomination papers of Ram Kishan were rightly rejected by the returning officer, but found that Shri Narbada Prasad was guilty of corrupt practices. Thus the appeal filed by Shri Narbada Prasad was dismissed.

In dealing with the question regarding the rejection of the nomination papers it was observed in para 5 of the judgement;

“The nomination paper of Ram Kishan was filed on February 20, 1967. The date of scrutiny was 21st of the same month. Ram Kishan had two alternatives before him. One was to produce any of the documents mentioned before the returning officer or to have filed it earlier with the nomination paper. He did neither. He produced a certificate from an officer who it is not proved to our satisfaction, had the authority to issue a certified copy of the electoral roll. He also added an affidavit on his own part in which the gist of the entry was given. Indeed the certificate of the Tehsildar was based on the affidavit which was annexed to the certificate. There was no compliance with the provisions of section 33(5) of the Representation of the People Act and there was no power in the court to dispense with this requirement. It is a well-understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all. Other modes of compliance are excluded. Even the certificate of the Tehsildar was not a certified or a true copy of the entry. It only gave the gist of the entry taken from the affidavit. It contains a mistake because the village ‘Dholgaon’ is mentioned without the addition of the word ‘Kalan’. It appears that there are to villages, Dholgaon Kalan and Dholgaon Khurd. The entry in the electoral roll clearly shows that it is Dholgaon Kalan. In other words the certificate was inaccurate. The affidavit of Ram Kishan was also inaccurate inasmuch as it described the house as No. 91 whereas in Electoral Roll the house is given the number 91/2. We, however, do not go by these small inaccuracies, because again the law is that which can be made certain is certain, but the fact is clear that the requirements of section 33(5) had to be and were not complied with. The rejection of the nomination paper of Ram Kishan by the returning officer was this justified.”

In AIR 1974 S.C. 951 (supra) (Two Judges) Parmar appellant challenged the election of Patel from Mahudha constituency for Gujarat Assembly, held in March 1972. The main ground of challenge was that at the time of the scrutiny the returning officer improperly rejected the nomination paper of one Jivabhai who was not an elector in Mahudha constituency to the Legislative Assembly and was an elector from Shahpur constituency in Ahmedabad city and had enclosed a certified copy of the corrigendum to the electoral roll issued by the registration officer who was officer in charge of preparation of the election rolls. The nomination papers of Jivabhai were rejected for non-compliance of section 33 (5) of the Act inasmuch as Jivabhai had not produced a certified copy of the relevant entries in the electoral roll before the returning officer at the time of the scrutiny of the nomination papers and only a certified copy of the corrigendum issued by the electoral registration office which showed the correction in the name of Jivabhai was produced. The High Court accepted the objection with regard to the non-compliance of section 33 (5) of the Act. The learned Judges of the Supreme Court observed in paras 5 and 6 of the judgement that:

“He (Jivabhai) is an elector of a different constituency. That being the position he could have complied with section 33 (5) by following one or other of the three modes provided in that sub-section, namely (1) he could have produced a copy of the electoral roll of Shahpur constituency, or (2) he could have produced a copy of the relevant part of the electoral roll of that constituency, in which his name appears, or (3) he could have produced a certified copy of the relevant entries in the electoral roll of that constituency. He, however, selected the third mode by enclosing a certified copy of the corrigendum to the electoral roll. It is clear that the corrigendum does not furnish all the particulars which would be available if a certified copy of the relevant entries in the original electoral roll as well as the corrigendum were produced before the returning officer at the time of the scrutiny. Since the original electoral roll may be corrected and amended, even sometimes by deleting some names, it is absolutely necessary for the satisfaction of the returning officer that a certified copy of not only the original electoral roll containing the relevant entry as also a certified copy of the amendment list concerning the candidate are produced at the time of the scrutiny, if these had not already been filed alongwith the nomination paper. In the instant case the candidate remained satisfied by filing a certified copy of only the corrigendum which did not satisfy the returning officer as regards the identity of the candidate. When, therefore, the returning officer rejected the nomination paper the order can be supported on the ground that a certified copy of the entry in the original electoral roll was not furnished alongwith the certified copy of the entry in the list of amendments. It cannot, therefore, be said that the rejection of the nomination paper under section 36 (2) (b) in this case was improper.”

Reliance was placed on *Baru Ram vs. Prasinni* (supra) and *Narbada Prasad vs. Chhagan Lal* (supra). It was held that the non-compliance of section 33 (5) of the Act is a defect of a substantial character and is not covered by section 36 (4) of the Act and the appeal was dismissed.

In A.I.R. 1979 S.C. 1148 (supra) (a three Judges Bench), one Dwivedi filed his nomination papers for election to 34-Anuppur Legislative Constituency of Madhya Pradesh Assembly. He had not complied with the requirements of section 33 (5) of the Act, and it was held that the non-filing of the certified copy is a defect of substantial character resulting in invalidation of the nomination papers due to non-compliance with the provisions of section 33 (5) of the Act. The judgements in A.I.R. 1959 S.C. 93 (supra) and AIR 1969 S.C. 395 (supra) and AIR 1974 S.C. 951 (supra) were referred with approval.

In AIR 1985 S.C. 847 (supra) (Two Judges Bench) Shri Brij Mohan appellant was declared elected from Jind Constituency of Haryana Legislative Assembly. His election was challenged by Shri Sat Pal respondent. A single Judge of the Punjab and Haryana High Court declared the election of Shri Brij Mohan as void on the ground that nomination papers of a candidate

Dog Ram were improperly rejected by the returning officer. It was found that errors in regard to electoral roll numbers of the candidate and the proposer in the electoral roll and the nomination paper did not constitute defects of a substantial character as mentioned in proviso to section 33 (4) of the Act. Brij Mohan filed an appeal in the Supreme Court. After discussing the relevant law on the point and given reference to the hand book for the returning officers issued by the Election Commission it was observed in paras 19 and 20 of the judgement:

"Instead of entering the correct part No. 39 in the nomination paper, the part number was incorrectly mentioned as 57 in regard to the candidate Dog Ram and as 6 in regard to himself (proposer) which are in fact really their house numbers. The candidate and the proposer are always expected to go fully prepared to meet any objection that may be raised by any candidate or even by the returning officer himself *suo motu* at the time of scrutiny and they cannot be expected to go merely because the returning officer has received nomination paper without raising any objection. It is at the time of scrutiny which is done in the presence of all concerned that the nomination papers come up for more detailed consideration at the hands of the returning officer against whom there is no estoppel in regard to the statutory duty of scrutiny."

It was held that the returning officer was right in rejecting the nomination paper of Dog Ram and as such the appeal was allowed. The judgements in AIR 1968 S.C. 1179 (supra), AIR 1972 S.C. 580 (*Ram Awadesh Singh v. Sumitra Devi*) and AIR 1983 S.C. 856 (*Viveka Nand Giri v. Nawal Kishore Sahi*) were distinguished on the ground that the defects in the nomination papers in these three judgements were not of substantial nature.

In AIR 1985 S.C. 1073 (supra) (a Three Judges Bench), Lila Krishan was declared elected to Fatehabad constituency of Haryana Legislative Assembly. Mani Ram challenged the election on the ground that the nomination papers of two candidates Mani Ram Chapola and Raj Tilak were improperly rejected by the returning officer. The High Court found that the nomination papers when filed were in order and while they were in custody of returning officer's establishment interpolation had been made and on the basis thereof the nomination papers were rejected and for this reason the election was set aside. An appeal was preferred by Lila Krishan in the Supreme Court. The learned Judges in para 14 of the judgment observed:

"To cast the obligation on the returning officer to look through the entire electoral roll of a particular part with a view to finding out the identity of the proposer is not the requirement of law. To read that as an obligation is likely to lead to an unworkable position.....

To cast the obligation of verifying the entire electoral roll of a particular part is actually requiring the returning officer to do almost an impossible feat. It may not be so if there be a few candidates and it be a case of a by-election but when general election takes place and every returning officer is supposed to handle about seven or eight Assembly constituencies and there may be instances of even 300 candidates contesting from one seat as it happened in the 1985 elections in the Belgaum Constituency of Karnataka State, the returning officer would find it physically impossible to grapple with such a situation. The election schedule is a very tight one. Under the law the day following the last day fixed for receipt of nomination papers is the date of scrutiny and soon thereafter follows the date fixed for withdrawal. If nomination papers are not scrutinised with due haste and promptness the election schedule may not be operative in strict manner and dislocations are bound to follow."

It was held that the nomination papers were rightly rejected by the returning officer. The

appeal was allowed and the judgement of the High Court was set aside and the election was upheld.

In A.I.R. 1978 Delhi 199 (supra), the election of Ved Prakash respondent was challenged on two broad facts. First was the improper rejection of the nomination papers of Shri Devinder Kumar, who had filed two nomination papers from constituency of Rohtas Nagar 33.

The learned Judge observed that under old section 33 it was for the returning officer to require the production of the copy at the time of the presentation of the nomination paper but now the returning officer is not under any obligation. A statutory obligation is now imposed upon the candidate to produce the same before the returning officer at the time of scrutiny if it was not done earlier alongwith the nomination paper. Repelling the contention that the returning officer should have issued a memo in the form prescribed drawing the attention of the candidate to the fact that a certified copy was required to be produced, it was observed that the law did not require any memorandum to be issued to the candidate for this purpose. When the certified copy of the electoral roll is not produced then there is non-compliance of the provisions of section 33 (5) of the Act and the nomination paper was rightly rejected by the returning officer. The learned Judge held that the nomination papers were rightly rejected.

In 20 E.L.R. 63 (supra) (Rajasthan High Court) Chand Singh (elector) filed an election petition challenging the election of Shankar Lal. One of the contentions was that the nomination papers of one candidate Chattar Singh were wrongly rejected by the returning officer on 1-2-1967. Chattar Singh was an elector to Kharchi constituency and he filed his nomination papers for that constituency on 29-1-1957. He filed another nomination paper for Raipur constituency but with the papers for Raipur constituency he did not file any documents referred to in section 33 (5) of the Act and as such the nomination papers were rejected. The contention was that the nomination papers should not have been rejected because Shri S.N. Shukla was the returning officer for both Raipur and Kharchi assembly constituencies and certified copy had already been produced at the time of filing of the nomination papers before the assistant returning officer which showed that the name of Chattar Singh was entered in the electoral roll of Kharchi assembly constituency and the assistant returning officer had admitted the correctness of that entry by a reference to electoral roll of Kharchi constituency, that the omission to produce the electoral roll was merely a technical defect and the returning officer could have himself examined the nomination papers filed by Chattar Singh by reference to the electoral roll of Kharchi constituency and could have satisfied himself that his name found place therein. It was held that the nomination papers had been rightly rejected and the election petition was dismissed. After referring to AIR 1959 S.C. 93 (supra), it was observed that the requirement of section 33(5) was mandatory and breach of that provision was a defect of substantial character. No distinction is drawn between a case in which the name of a candidate appeared in a constituency for which the same returning officer had been appointed and a case in which different returning officers have been appointed. If at the time of filing of the nomination papers the assistant returning officer was satisfied about Shri Chattar Singh being an elector of Kharchi constituency, it does not in any way dispense with the duty cast on Chattar Singh to produce any of the documents referred to in section 33 (5) of the Act for satisfying the returning officer at the time of the scrutiny that he was a voter in Kharchi constituency. Shri Chattar Singh himself was not present at the time of scrutiny. If the returning officer was in a mood to oblige Chattar Singh he could have called the electoral roll of Kharchi constituency from his office, but there was no duty cast on him to do so and he was within his limit in dismissing the nomination papers of Chattar Singh on the ground that he has not complied with the provisions of section 33 (5) of the Act.

In 29 E.L.R. 108 (supra) (Rajasthan High Court) it was held that section 33 (5) of the Act is mandatory and the non-compliance with this requirement entails a rejection of the nomination papers under section 36 (2) (b).

In the present case, Shri Bachittar Singh (RW 2) whose nomination papers were rejected, states that he had purposely not filed the copy of the electoral roll with the nomination papers of 20-Kot Kehloor constituency because he was not serious to contest the election from 20-Kot Kehloor constituency and he knew that the filing of the copy was necessary. He also states that at the time of filing of the nomination papers he was served with a notice by the returning officer informing him about the non-production of the copy of the electoral roll of Gherwin constituency with the nomination papers of 20-Kot Kehloor and in token of the receipt of this notice, he issued a receipt Ex. PD. He further states that he never requested the returning officer for time to produce copy of the electoral roll of Gherwin constituency to prove that he was a voter in Gherwin constituency and also never requested the returning officer to peruse the papers of Gherwin constituency. He also admits having received the copy of the order of rejection of his nomination papers from the returning officer. The subsequent conduct of this witness in not objecting to the rejection of his nomination papers or in not challenging the election of respondent No. 1 also proves that he was not keen to contest the election from 20-Kot Kehloor constituency, and had intentionally allowed his nomination papers to be rejected for non-compliance of mandatory provisions of section 33 of the Act.

Shri Krishan Kumar Kaushal petitioner in El. P.No. 8 of 1985 and Shri Dila Ram petitioner in El. P. No.9 of 1985 were not present at the time of the scrutiny of the nomination papers. There is no reason to disbelieve the statement of Shri Bachittar Singh (RW 2).

In view of the factual position and the case law discussed above, the returning officer was justified in rejecting the nomination papers of Shri Bachittar Singh due to non-compliance of the mandatory provisions of section 33 (5) of the Act.

The judgements referred to by the learned counsel for the petitioner are distinguishable and are not applicable to the facts and circumstances of the present case and I will now refer to these judgments.

In AIR 1958 Ker. 154 (supra), a copy of the electoral roll was produced by a candidate but a certified copy had not been produced. The learned Judges held that section 33 (5) of the Act makes a distinction between a copy and a certified copy. If what is produced is copy of the entire roll or as in the present case of the relevant part, a copy will suffice. But if what is produced is only a copy of the relevant entry in the roll then it must be a certified copy. Surely the words copy and certified copy could not be used in the same sense and the juxta-position of these words in relation to different sets of circumstances makes it quite apparent that the returning officer was wrong in insisting on the production of a certified copy of the relevant part. So long what was produced was a copy of the entire roll or as in this case, of the relevant part, he had to be content with that and could not insist on the production of a certified copy. In these circumstances it was held that the nomination papers were wrongly rejected. This judgment is distinguishable on facts because the provisions of section 33 (5) of the Act were in fact applied.

In AIR 1966 S.C. 1626 (supra) (A Bench of Five Judges), Ranjit Singh was elected from Sangrur Parliamentary constituency. Pritam Singh challenged the election and one of the grounds of challenge was that the nomination papers of one Wazir Singh were rejected improperly by the returning officer. Wazir Singh had filed three nomination papers and with one of them he had attached a copy of the part of the electoral roll. With the other two nomination papers he did not attach such copies. At the time of scrutiny of the nomination papers the returning officer first took up the nomination papers with which copy of the part of the electoral roll had been filed and rejected it on the ground that the name of Parliamentary constituency and name of village and the assembly constituency and the part number of the electoral roll of the candidate was not mentioned and also because the name of the Parliamentary constituency of the proposer was not given. After rejection of this nomination paper, he rejected the two nomination papers on the ground that a copy of the electoral roll of the constituency concerned or relevant part thereof or a certified copy of the relevant entries had not been filed alongwith these nomination papers.

The Election Tribunal took the view that the copy filed with the first nomination papers could not be looked into when the returning officer came to scrutinise the other nomination papers even if it might be assumed to be a copy of the Parliamentary electoral roll. It further held that even if the copy could be looked into, it was not a complete copy and therefore, there was no compliance with section 33 (5) of the Act.

An appeal was filed in the High Court by Pritam Singh and the High Court held that the returning officer was wrong in not looking into the copy which had been filed with the first nomination paper. The High Court further held that the copy actually produced though admittedly it did not contain pages, was sufficient for the purpose of section 33 (5) of the Act. It thus held that the nomination papers of Wazir Singh were improperly rejected and the result of the election was materially affected. As a result the election was ordered to be set aside.

An appeal was preferred in the Supreme Court and in para 7 of the judgment it is observed:

“Section 33 (5) does not require that a copy must be filed with each nomination paper, for the candidate is given the alternative to produce before the returning officer such copy at the time of the scrutiny. So the candidate need not file any copy with the nomination paper and it is enough if he has a copy in his possession which he produces before the returning officer at the time of the scrutiny. Further there is nothing in section 33 (5) which requires that if a candidate has (say) filed four nomination papers he should have four copies with him to produce before the returning officer at the time of the scrutiny. It would in our opinion be enough if he has one copy with him at the time of the scrutiny and shows it again and again as each nomination paper is taken up for scrutiny by the returning officer. We see no sense in holding that in such a situation the candidate should arm himself with four copies for the purpose of showing the copy to the returning officer at the time of scrutiny. The same copy in our opinion can be produced again and again before the returning officer as he takes up the scrutiny of each of the nomination papers filed on behalf of a candidate. If that is so we see no difficulty in holding that where a number of nomination papers have been filed and a copy has been filed with one of them that is enough. Again we see nothing in S. 33 (5) which prevents a returning officer from looking at the copy filed with one nomination paper, even after that nomination paper has been rejected or with a nomination paper which is pending before him for scrutiny, when he comes to deal with other nomination papers. As we have said before the purpose of filing the copy is to ensure that the returning officer is able to check whether the candidate concerned is qualified or not and that purpose would be effectively served even if only one copy is filed with the other nomination paper and no copies are filed with the other nomination papers. It may be that for certain purposes each nomination paper stands by itself; but so far as filing of a copy with a nomination paper under S. 33 (5) is concerned, we must look at the object behind the provision, and if that object is served by filing a copy with one nomination paper, we see no sense in requiring that where a number of nomination papers are filed there should be a copy with each nomination paper. There is nothing in S. 33 (5) which prevents the returning officer from looking at a copy filed with a nomination paper which has been rejected or which is still to be scrutinised for the purpose of satisfying himself when he takes up the other nomination papers that the candidate is qualified to stand. Nor has any rule been shown to us which in terms prevents the returning officer from looking into a copy which has been filed with a nomination paper (which might have already been rejected) for the purpose of scrutinising other nomination papers of the same candidate. If the purpose of S. 33 (5) can be served by the production of one copy at the time of scrutiny when it has not been filed with the nomination paper, we do not see why that purpose could not be served by filing a copy with one nomination

paper where more nomination papers than one have been filed by the same candidate. We therefore agree with the High Court that the returning officer was wrong in not looking at the copy filed with one nomination paper when he was dealing with other nomination papers of Wazir Singh."

This judgment is distinguishable on facts because in this judgment also the provisions of section 33 (5) were complied with.

In A.I.R. 1968 S.C. 1179 (supra) (Two Judges) Madan Lal respondent had filed two nomination papers for contesting the election from 9-Arki assembly constituency of Himachal Pradesh. The scrutiny of the nomination papers took place on 21-1-1967 and at the time of the scrutiny his nomination papers were rejected by the returning officer. The election of Shri Hira Singh appellant was challenged by Shri Madan Lal on the ground that his nomination papers were improperly rejected.

The Hon'ble Judges of the Supreme Court found that Shri Madan Lal was a dummy Congress candidate and he never wanted to contest the elections because Congress had selected Mr. Hari Dass one of the then Minister in Himachal Pradesh Government for contesting the constituency in question. The respondent was a covering candidate for Hari Dass. They further held that errors found in the nomination papers were purely clerical errors and the returning officer had a duty to scrutinise the nomination papers when they were presented to him. The returning officer failed in his duty and on the date of scrutiny he had before him all the required information. It could be said that while scrutinising the first nomination paper he had no material before him to find out whether the proposer of candidate was really an elector in the constituency or not. But when he came to second nomination paper where the proposer's name as well as his place in the electoral roll was correctly mentioned, it was improper on his part to have rejected that nomination paper. In that nomination paper the candidate's name was found at serial No. 504 of part 2 though in fact it was found at serial No. 504 of part 12 of that constituency. But from the first nomination paper the returning officer could have easily found out the correct part of electoral roll because all the required information was before him. In these circumstances, the rejection of the nomination paper of Madan Lal was held to be invalid and the election of the appellant was set aside under section 100 of the Act. This judgment is already referred to and distinguished in AIR 1985 S.C. 847 (supra). The facts in this judgement are altogether distinguishable and cannot be applied in the present case.

In A.I.R. 1984 S.C. 1515 (supra) S/Shri Ganu Ram, Rikhi Ram Kaundal and three others contested from 23-Gherwin assembly constituency seat which seat was reserved seat for scheduled caste candidate only. All the nomination papers of these candidates were found to be valid. Shri Ganu Ram was declared elected. Shri Rikhi Ram Kaundal filed an election petition on the ground that the nomination papers of the appellant were not in order inasmuch as it did not contain any declaration by the appellant specifying the particular caste of which he was a member and the area in relation to which the said caste had been declared to be a scheduled caste in the State. Another ground of objection was that since the appellant had not made any declaration in the nomination paper regarding a particular caste to which he belonged he should be deemed to be disqualified for being chosen to fill the seat in question in view of the mandatory provisions contained in sub-section (2) of section 33 of the Act. The third ground was that appellant did not as a matter of fact belong to any of the castes which had been declared as scheduled caste in relation to the State of Himachal Pradesh and was not qualified to stand as a candidate from the aforesaid reserved constituency.

The High Court upheld the first two contentions and set aside the election of the appellant holding that the nomination papers of the appellant could not be regarded as valid in view of the

fact that it did not contain a declaration by the appellant specifying the particular caste of which he was a member and the area in relation to which the said caste was a scheduled caste in the State. The third contention was rejected because it was found that the appellant belonged to the Lohar caste which was declared to be scheduled caste in the State of Himachal Pradesh. As election of the appellant was ordered to be set aside, therefore, the appellant preferred an appeal in the Supreme Court.

The Hon'ble Judges of the Supreme Court, after considering the provisions of section 33(2) held that in the nomination form filed by the appellant and his proposer no written declaration had been made specifying the caste to which the appellant belonged and the area in relation to which that caste was a scheduled caste of the State. But the appellant alongwith the nomination papers had filed an annexure, that is, a certificate issued by the Sub-Divisional Magistrate Ghumarwin certifying that the appellant belonged to a scheduled caste namely, Lohar. This certificate was appended to the nomination paper obviously with the sole purpose and intention of making it known to the returning officer and all other concerned that the appellant was filing his nomination paper as a candidate belonging to a scheduled caste namely Lohar and it was in proof of that assertion and for eliminating doubt or controversy in the matter that the Sub-Divisional Magistrate's certificate was produced. The Hon'ble Judges further held that when the nomination paper has been made in prescribed form, there is no legal prohibition against other requisite particulars being furnished in a separate paper appended to the form instead of writing them out in the form itself. This is very often done in the matters of filing returns of income tax and wealth tax etc. and in such cases the annexures appended to the form are treated as part of the nomination papers. In the circumstances, it was held that the annexures to the nomination papers had to be treated as forming part of the nomination paper and the declaration contained therein that the appellant belonged to the scheduled caste of Lohar must be understood and treated as a declaration by the appellant in the nomination form within the meaning of sub-section (2) of section 33 of the Act. It was further observed that the court has to place a liberal and benevolent interpretation on the provisions contained in section 33 (2) of the Act rather than adopt a narrow, rigid, technical and purely literal construction. The learned Judges observed that they were dealing with the nomination papers pertaining to candidates belonging to scheduled caste and scheduled tribe who, for well known historical reasons, are unfortunately, extremely backward socially, economically and educationally in comparison with other sections of our people. It was further held that the requirement of section 33 (2) was fully satisfied because by producing the certificate of the Sub-Divisional Magistrate as an annexure to the nomination paper the appellant had clearly made it known that he was filing the nomination as a candidate belonging to Lohar caste which is scheduled caste in the State of Himachal Pradesh. It also held that no objection was raised against the nomination of the appellant at the time of the scrutiny. In view of this the appeal was accepted and the order of the learned Single Judge of the High Court was set aside. The election of the appellant was upheld and the election petition filed on behalf of the respondent was dismissed.

This judgment is not applicable in the present case because it deals with the provisions of section 33 (2) of the Act and not section 33 (5) of the Act.

In view of the above discussion, I decide issue No. 1 against the petitioner.

Issue No. 2 :

This issue was not seriously pressed by the learned counsel for the petitioner.

The allegations in paras 10 to 12 of the petition are that previously polling station, 56-Chelag was notified to be housed at Panchayat Ghar, Suin Sarai, but it was unauthorisedly and illegally shifted to Government Middle School Suin Sarar at a distance of about 2 km. from the Panchayat Ghar. Due to this change the election prospects of respondent No. 1 were enhanced because the voters and supporters of the petitioner were not aware of the change. The Government Middle School, Suin Sarar was already a notified polling station named Suin polling station.

The other allegation is that 58 Sayer polling station was notified to be housed at Government Primary School, Sayer, but it was unauthorisedly and illegally shifted to private Bhawan, Sayer Serai situate at a distance of about 1½ km. This shifting again advanced the prospects of respondent No. 1. The shifting of both polling stations was done at the instance of Shri Shankar Singh Thakur, Election Assistant in the District Election Office, Bilaspur, who is the real brother of respondent No. 1. Paras 10 to 12 are verified by the petitioner from his knowledge.

The petitioner did not produce any oral evidence to prove these allegations and the learned counsel for the petitioner frankly admitted this fact during the course of arguments.

Ex. R-1 and R-2 relate to the change of 56-Chelag polling station from Panchayat Ghar, Suin Sarar to 56-Suin Middle School, Suin Sarar. The reason for this change is the complete collapse of the Panchayat Ghar, Suin Sarar and the change was proposed on 22-1-1985 and approved on 29-1-1985 vide Ex. R-3.

Similarly, Ex. R-4, R-5 and R-6 relate to the change of polling station, 58-Sair from Primary School, Sair. This change was approved on 20-12-1984.

Shri Dharam Lal (RW 2) was Naib-Tehsildar Election, at Bilaspur in February/March 1985. He has proved the documents Ex. R-1 to R-6 and states that the change of the polling stations was proposed by the District Election Officer of his own accord and not at the instance of any person.

It is thus not proved that the change in the polling station was unauthorised, illegal or in violation of the rules and the Act. This issue is accordingly decided against the petitioner.

Issue No. 3 :

In paras 13 and 14 of the petition, it is alleged that before start of the polling the supporters of the respondent No. 1 with the prior consent of respondent No. 1 attacked the booth set up by the supporters of the petitioner at polling station No. 20/36-Patta and beatings were given. A wave of terror spread amongst the voters and supporters of the petitioner, with the result that they could not exercise their franchise. The booth capturers also threatened the voters to vote in favour of respondent No. 1 and in case they did not vote for respondent No. 1 then they would be killed and their families would be harrassed. False rumours were spread by respondent No. 1 and his supporters that the supporters of the petitioner had stabbed some supporters of respondent No. 1 with an ulterior motive of prejudicing the prospects of the result of the petitioner. These allegations are denied by the respondent No. 1 in the written statement.

The learned counsel for the petitioner contended that respondent No. 1 had committed a corrupt practice under section 123 (2) of the Act and Shri Ram Saran Advocate (RW 10) a counting agent of respondent No. 1 also committed a corrupt practice of undue influence as an agent of respondent No. 1.

The learned counsel for respondent No. 1 contended that the evidence was false, unreliable and unsatisfactory and no corrupt practices under section 123 (2) of the Act were committed.

I have considered the contentions.

Section 123 (2) reads as follows:—

“123. *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purpose of this Act:

- (1) x x x x x x x x
 (2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that:

- (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who,—
 (i) threatens any candidate or any elector or any person in whom a candidate or an elector is interested, with injury or any kind including social ostracism and ex-communication or expulsion from any caste or community; or
 (ii) x x x x x x x x shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;
 (b) x x x x x x x
 (3) to (7) x x x x x x x

Explanation.—(1) In this section the expression 'agent' includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

- (2) x x x x x x x x
 (3) x x x x x x x x

Ex. P-6 application was filed by Shri Bidhi Chand Advocate (PW 5), a member of the State Executive of C.P.I. Himachal Pradesh, before the returning officer Bilaspur. Shri Bidhi Chand (PW 5) states that this application was filed upon information given to him by S/Shri Sher Ali (PW 6) and Mangal Singh (PW 9) about booth capturing in Kallar Patta polling station. Both Sher Ali and Mangal Singh had injuries on their person due to beatings given to them by some persons.

In Ex. P-6 it is mentioned that the camp of C.P.I. was uprooted by S/Shri Amar Singh, Ram Saran alongwith 10/12 persons who had formed an unlawful assembly and a terror was created amongst the voters by attacking and giving beatings with arms and dandas and inflicting injuries on S/Shri Sher Ali and Mangal Singh. A fracture was suspected to the arm of Mangal Singh and protection be given to C.P.I. workers and action be taken against the assailants under the Indian Penal Code.

This application Ex. P-6 was given to Shri K. Lal, Deputy Commissioner, Bilaspur who directed the Superintendent of Police to enquire and report in the matter. It was then endorsed to S. H. O. Police Station Sadar, who deputed Head Constable Tulsi Ram to get the injured examined medically and also to record their statements.

Ex. P-7 (report No. 5 dated 5-3-1985) was entered on the basis of the application Ex. P-6 and Ex. P-8 is a copy of the telegram issued to the Chief Electoral Officer Shimla by Shri Shanker Singh, Secretary C.P.I. about this alleged booth capturing and demanding a repoll.

Shri Roshan Lal Dube (PW 4) states that the telegram (Ex. P-8) was handed over in the telegraph office at Bilaspur on 5-3-1985 at 2-30 P.M.

The statements of S/Shri Sher Ali and Mangal Singh recorded by the Head Constable and their medico-legal reports have not been produced. Shri Birbal Ram (PW 3) S.H.O. Sadar Bilaspur states that after recording the report he alongwith the Deputy Commissioner and the Superintendent of Police went to the post to make enquiries but after investigations the allegations made in the application Ex. P-6 were not found to be correct for which a report was submitted to the

* Superintendent of Police. On account of this report no further proceedings were taken on the basis of the report Ex. P-7 or the application Ex. P-6.

Shri Bidhi Chand (PW 5) states that the Deputy Commissioner Bilaspur gave the application Ex. P-6 to the Superintendent of Police Bilaspur, who told him that he would be visiting the spot and the telegram Ex. P-8 was sent upon his instructions. He admits Sher Ali (PW 6) to be a member of the C.P.I.

Shri Sher Ali (PW6) worker of Communist party, states that he was deputed to set up a polling booth at Kallar Patta by the Communist party. He reached the place at about 7.30 A.M. on 5-3-85 and the booth was setup by him, Zulfikar Ali Bhutto (PW 8) and Mangal Singh (PW 9). Thereafter Shri Amar Singh Sankhyan came on a motorcycle and asked them to remove the booth, but they refused. Shri Amar Singh Sankhyan then went towards a shop and came back with Shri Ram Saran Advocate and ten more persons armed with lathis. These persons gave beatings to him and Mangal Singh and others and forcibly removed the booth. He and Mangal Singh received lathi injuries. Then he alongwith Mangal Singh went to Bilaspur and informed S/Shri Bidhi Chand and Shamsheer Singh about the occurrence. A complaint in writing was filed to the Deputy Commissioner which was handed over to the Superintendent of Police. They were medically examined by a doctor and the medical report was given to the police authorities. Thereafter no enquiry was made from him or Mangal Singh about the complaint. He could not name any person who came with S/Shri Amar Singh and Ram Saran, no medical evidence was produced for corroboration.

Shri Zulfikar Ali Bhutto (PW 8) states that he is a supporter of the petitioner and had gone to Kallar Patta Polling station for putting up a booth on 5-3-1985. S/Shri Amar Singh and Ram Saran came on a motorcycle to the booth and wanted the booth to be removed. On refusal to remove the booth, S/Shri Amar Singh and Ram Saran left the place and came back after about 10/15 minutes with 10/12 other persons armed with lathis. The booth was uprooted and beatings were given to S/Shri Sher Ali (PW 6) and Mangal Singh (PW 9). During beatings 2/3 lathis were broken and he snatched lathis from 2/3 persons. He tried to persuade the attackers from not doing violence but Shri Ram Saran asked his younger brother to bring a gun from the house. S/Shri Sher Ali and Mangal Singh were sent to Bilaspur for giving information of the incident. Respondent No. 1 also reached the place of incident and approved the action of the attackers.

This witness is a supporter of the petitioner and was working for him during the election. He states that there are 5/6 shops near the place of the incident but could not give the name of any shop keeper. He was unable to give the name of any villager of Kallar Patta to whom he narrated the incident although he states that he narrated the incident to some villagers. He admits that he alongwith Sher Ali and Mangal Singh are C.P.I. workers.

Mangal Singh (PW 9) states that he alongwith Sher Ali and Zulfikar Ali Bhutto and Suman reached Kallar Patta at about 7.30 A.M. to put up a booth for the petitioner. He also corroborates the statement of Sher Ali (PW 6) on various aspects. He admits that he was medically examined by a doctor. He denies that he is a C.P.I. worker although Zulfikar Ali Bhutto has admitted that he is a C.P.I. worker. He also could not give the names of any of the shopkeepers who were available in the nearby shops at the time of the alleged incident. The witness also could not give the names of the persons who came with Ram Saran and Amar Singh for the attack. He also states that he complained about the postponement of the medical examination of S/Shri Shamsheer Singh and Bidhi Chand Advocate, but those persons assured him that they had a talk with the S.H.O. about this fact.

This witness is also interested in the petitioner.

All the witnesses are highly interested in the petitioner and their oral statements cannot be

believed specially when after the filing of the complaint an enquiry was held regarding the incident which was found to be false. S/Shri Mangal Singh and Sher Ali had allegedly received injuries and were examined medically, but for reasons best known to the petitioner their medical certificates have not been produced or proved. It also cannot be believed that no witness of the locality would support the petitioner if the occurrence had actually taken place.

According to the petitioner's witnesses Suman was also present, but he has not been produced.

It is alleged that Amar Singh and Ram Saran alongwith Chhote Ram, Sukh Ram, Nand Lal, Shiv Ram, Sukh Dev, Shankar Singh amongst others, all residents of polling station Patta attacked the booth and gave beatings to supporters of the petitioner. None of the persons named in para 13 of the petition were produced as witnesses except Chhote Ram (RW12) who was produced by the respondent. Chhote Ram (RW 12) has denied the above occurrence of booth capturing or beatings and states that only two booths were set up near the polling station Kallar Patta and that the Deputy Commissioner, Superintendent of Police and the S.H.O. Bilaspur visited this polling Station during the morning hours, but no enquiry about any incident was made from him.

In para 13 of the petition it is also alleged that Sant Ram, Babu Rani, Niku Ram, Sada Ram, Shankar Singh, Jit Ram, Sant Ram, Rattan Lal, Dila Ram, Krishan Lal, Jagdish Chand, Lekh Ram, Prem Lal, Sunder Lal and others were given threats for casting their votes in favour of respondent No. 1. None of these persons except Sant Ram (PW 7) was produced as a witness. Sant Ram (PW 7) states that he was informed by some persons that there was a dispute between the Communist and Congress (I) persons near the polling station Patta and an incident of stabbing had taken place. He was informed that Communists had stabbed Shri Amar Singh Sankhyan who had been removed to the hospital. No quarrel and stabbing took place in his presence. He has not stated that any threat was given to him or other persons for casting their votes in favour of respondent No. 1.

In view of the aforesaid discussion the version of the petitioner regarding booth capturing by the supporters of respondent No. 1 is not proved.

There is also no evidence to prove that respondent No. 1 had given his prior consent for such alleged booth capturing. The petitioner has no personal knowledge and S/Shri Sher Ali (PW 6), Zulfikar Ali Bhutto (PW 8) and Mangal Singh (PW 9) do not say that the prior consent of respondent No. 1 was taken by the attackers. In the complaint Ex. P-6 or the telegram Ex. P-8 there is also no mention that the up-rooting of the polling booth was done with the prior consent of respondent No. 1. Zulfikar Ali Bhutto (PW 8) only states that respondent No. 1 reached the place of occurrence afterwards and approved the conduct of the attackers. Ram Saran (RW 10) has denied the occurrence and states that a booth for the petitioner was set up on behalf of the C.P.I., but he or any other person never captured this booth. Shri Ram Lal respondent No. 1 (RW 6) also denied the occurrence and states that he never gave his consent never went to Kallar Patta polling station. Shri Mangat Ram (RW 11) who runs a hotel near Kallar Patta polling station states that no such alleged occurrence took place in his presence and he never came to know about any such alleged incident. Tulsi Ram (RW 13) Pradhan of Chharol Panchayat and a Congress (I) worker states that he went to Kallar Patta polling station at about 7.45 A.M. and came back at about 9.30 A.M. but never saw any such alleged incident. He also states that booth of C.P.I. was set up and was working smoothly.

After careful scrutiny of the evidence I find that the petitioner has failed to prove the allegations made in para 13 of the petition.

In A.I.R. 1975 S.C. 290 (*Rahim Khan vs. Khurshid Ahmed*) it is held in para 9 as follows:—

“However, we have to remember another factor. An election once held is not to be treated

in a lighthearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him to assail an election which has been concluded."

In A.I.R. 1977 S.C. 208 (*M. Narayana Rao vs. G. Venkata Reddy*) it is held that:

"That the election held and results declared on the choice of the voters should not be lightly interfered with or set aside by a court of law. After all, in the holding of a fresh election are involved numerous botherations, tremendous expenses, loss of public time and money and the uncertainty of the public representation from a particular constituency.

A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous documents to support it, Court should be very careful in scrutinising the oral evidence and should not lightly accept it, unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged."

In A.I.R. 1985 SC. 89 (*Surinder Singh vs. Hardial Singh and others*) it has been observed in para 23 as follows:—

"It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials. We are bound by the decision of the larger Bench in Mohan Singh's case (A.I.R. 1964 S.C. 1366) (*supra*) as also by decisions of co-ordinate benches and do not feel inclined to take a different view."

In (1986) 2 S. C. 121 (*Ram Chand Bhatia vs. Shri Hardyal*) It is observed in para 25 that :

".....election proceedings charge of corrupt practice are of quasi-criminal nature and it was for the election petitioner to prove beyond reasonable doubt all the necessary facts which would establish the allegation of corrupt practices that have been alleged in the Election Petition. The respondent has failed to establish the link that the appellant was responsible for the printing of the offending poster. If the important link of the charge is not established it will be difficult to accept the succeeding link that respondent or his agent or persons with his consent distributed the offending poster in the various meetings. It would be unsafe to accept the oral evidence on its face value without seeking for assurance from some other circumstances or unimpeachable documents."

Regarding the spreading of the rumour of stabbing of the Congress (I) worker Shri Amar Singh Sankhyani by the C.P.I. workers, it is stated in para 14 of the petition that respondent No.

1 himself visited polling stations Namhol, Palog, Kotla, Seola, Gasaur, Rani Kotla, Sayer and Dhar Tath immediately after capturing of the booth and sent his supporters to various polling stations for spreading the rumour of stabbing. This false rumour of stabbing was spread in the presence of Dila Ram of village Dagsech at polling station Palog and Devi Ram, Anant Ram, Tulsi Ram, Kanshi Ram belonging to polling station Kotla, Khazana Ram, Chuni Lal, Sukh Ram, Phithu Ram of polling station Gasaur, Tulsi Ram, Dila Ram, Ramakant belonging to polling station Jukhala, Rattan Lal, Bansi Ram, Tulsi Ram, belonging to polling station Seola and Buta Ram and Nand Parkash of polling station Namhol, Bara Ram, Krishan Lal and others belonging to polling station Rani Kotla alongwith Sheesh Ram, Balu Ram, Chunka Ram at polling station Rani Kotla. At Sayer polling station the rumour was spread by respondent No. 1 in the presence of Krishan Lal and Lekh Ram and at polling station Dhar Tath, there were many voters including Chhota Ram.

The petitioner (PW 1) has not personal knowledge about this allegation and Sant Ram (PW 7) is not named in para 13. Achhroo Ram (PW 12) states that the aforesaid rumour was spread at Jukhala polling station but his name does not find mention in the petition. He also states that Piare Lal, Gantantar, Babu Ram were present when the stabbing incident was narrated by respondent No. 1. None of these persons was produced by the petitioner.

Bara Ram (PW 13) states that respondent No. 1 came in a jeep with some of his workers to Rani Kotla polling station and informed him that at Kallar Patta a Congress (I) worker had been stabbed and the police had taken the Communist workers to police station and further asked not to vote for Communist Party candidate. This witness was unable to give the names of the persons who were accompanying respondent No. 1, and he was also unable to give the names of the persons who had come to cast their vote and were present at the relevant time. He is illiterate and is unable to give the names of the months according to gregorian calendar although in his examination in chief he has specifically stated that respondent No. 1 came on 5-3-1985.

Respondent No. 1 (RW 6) has denied the allegations and states that he never went to Kallar Patta. The petitioner although has named many persons in the petition but did not care to produce these persons.

Lekh Ram (PW 18) states that he heard the rumour of stabbing at Sayer polling station but his name does not find mention in the petition. Chunka (RW 14) is a resident of Sayer whose name finds mention in the petition, but he states that he did not see respondent No. 1 visiting polling station Sayer and also did not hear any rumour regarding stabbing of Congress (I) worker at Kallar Patta. Shri Sukh Ram Kaushal (RW 15), a Lok Dal Party worker and supporter of B.J.P. states that he did not hear any rumour of stabbing although he was handling polling stations Bholi, Chilag, Suin, Kotla, Jukhala, Chawla and Gasaur.

Shesh Ram (RW 16) is a resident of village Gori and a voter in polling station Rani Kotla. He states that he never heard any such rumour.

Som Parkash (RW 17) of Gasaur, Babu Ram (RW 20) of Panjantan and Babu Ram of Surar also state that they never heard any such rumour of stabbing.

Kanshi Ram (PW 17) of Rani Kotla and Lekh Ram of Doba are voters in Sayer and they state that they heard the news of stabbing of Congress (I) worker by Communist workers, but both these persons have not been mentioned in para 14 of the petition.

In view of the evidence discussed above, I am of the view that the petitioner has failed to prove the allegations made in para 14 of the petition that a false rumour was spread about

In view of the evidence discussed above, it is held that the petitioner has failed to prove issue No. 13 and this issue is decided against the petitioner.

In paras 18 and 19 of the petition, it is alleged that Dr. S. R. Chauhan, G.D.O. I holding a gazetted post and originally belonging to village Gasaur in Kot Kehloor constituency, was posted in Civil Hospital, Bilaspur. In January/February, 1985, he was under transfer from Bilaspur hospital to a remote area, but did not join his new place of posting and was trying to get his transfer orders cancelled. He approached respondent No. 1 for cancellation of his transfer and respondent No. 1 asked him to work for him (Respondent No. 1) in the constituency during the elections and that after the conclusion of the elections, the transfer orders would be cancelled. The petitioner alleges that the talk between Dr. Sukh Ram Chauhan and respondent No. 1 took place on 12-2-1985 at the residence of Dr. Sukh Ram Chauhan at Bilaspur in the presence of S/Shri Manohar Lal and Ranjit Singh. Consequently Dr. Chauhan canvassed for respondent No. 1 and went with respondent No. 1 to villages Damthal, Rehri, Jukhala, Asa Majhiari on 24-2-1985 for canvassing.

Respondent No. 1 has denied these allegations.

The learned counsel for respondent No. 1 contended that the petitioner had failed to prove the various allegations.

Section 123(7) reads as follows:—

(1) to (6)	X	X	X	X	X	X
------------	---	---	---	---	---	---

(a) Gazetted officers;

(b) to (g)	X	X	X	X."
------------	---	---	---	-----

In order to succeed the petitioner has to prove that respondent No. 1 or his agent or any

other person with the consent of respondent No. 1 or his election agent obtained or procured any assistance for furtherance of his election prospects from Dr. Sukh Ram Chauhan, who admittedly is a Gazetted Officer.

There are three allegations:—

- (a) Talk between respondent No. 1 and Dr. Sukh Ram Chauhan on 12-2-1985,
- (b) Canvassing by Dr. Sukh Ram Chauhan on 24-2-1985, and
- (c) Canvassing by Dr. Sukh Ram Chauhan on 3-3-1985.

I will deal with these allegations separately.

- (a) *Talk dated 12-2-1985 between respondent No. 1 and Dr. Sukh Ram Chauhan at the residence of Dr. Sukh Ram Chauhan in the presence of S/Shri Manohar Lal and Ranjit Singh:*

Shri Manohar Lal (PW 10) states that his daughter was having loose motions in the month of February, 1985 and he alongwith his wife and the daughter went to Bilaspur to contact Dr. Sukh Ram Chauhan. (RW 8). At Bilaspur Bus Stand, he met Shri Ranjit Singh (PW 14) and all of them went to the residence of Dr. Chauhan on 12-2-1985 at about 6.45 A.M. where they found respondent No. 1 sitting with Dr. Chauhan. Respondent No. 1 was requesting Dr. Chauhan for help during the March, 1985 elections but Dr. Chauhan was telling respondent No. 1 that he was under transfer orders and it would not be possible for him to render any help during elections. Respondent No. 1 then assured Dr. Chauhan that he should render help during the elections and transfer orders would be cancelled. Then the ailing child was examined by Dr. Chauhan and medicines were given for treatment. He further states that Dr. Chauhan also requested him (witness) for casting the vote in favour of respondent No. 1.

This witness admits that he was getting his daughter treated privately and that Dr. Chauhan gave a prescription slip. The prescription slip or the cash memo/bill for the purchase of medicines have not been produced. Thus the documentary evidence which was available has not been produced.

Ranjit Singh (PW 14) a resident of Tarer states that he accompanied Manohar Lal (PW 10) to the residence of Dr. Chauhan on 12-2-1985 and saw respondent No. 1 requesting Dr. Chauhan for help during the March, 1985 elections. He corroborates the statement of Shri Manohar Lal (PW 10) and admits that a prescription slip was given by Dr. Chauhan to Shri Manohar Lal (PW 10), to enable Manohar Lal (PW 10) to purchase the medicines. This witness resides at a distance of 20 miles from Bilaspur and met Shri Manohar Lal (PW 10) by chance. The oral statements of S/Shri Manohar Lal and Ranjit Singh cannot be relied upon because documentary evidence which could be produced has not been produced and also for the reason that both Dr. Chauhan (RW 8) and respondent No. 1 (RW 6) deny these allegations.

Respondent No. 1 (RW 6) states that he had no talk with Dr. Chauhan (RW 8) on 12-2-1985 and he never talked to Dr. Chauhan or requested him for any help, support or work during the March 1985 elections. He also states that Dr. Chauhan never supported him during March 1985 elections to the best of his knowledge and with his consent. He also never took any part in getting the transfer orders of Dr. Chauhan cancelled. The suggestion that he met Dr. Chauhan on 12-2-1985 at about 8 A.M., at Bilaspur or that Manohar Lal (PW 10) and Ranjit Singh (PW 14) came to the residence of Dr. Chauhan in his presence was denied by him.

Dr. Sukh Ram Chauhan (RW 8) also denied meeting respondent No. 1 on 12-2-1985. He states that respondent No. 1 never approached him for help during March, 1985 elections and

S/Shri Ranjit Singh and Manohar Lal never came to his residence for treatment of the child of Manohar Lal on 12-2-1985. He never took any part during the elections and never canvassed for respondent No. 1. The witness was not confronted with any prescription slip which had allegedly been given by him on 12-2-1985 at the time when he examined the ailing child of Manohar Lal. The witness denied the suggestion that he ever examined the ailing child of Manohar Lal at his house on 12-2-1985. The witness states that he was on medical leave from 31-12-1984 to 29-3-1985 and was under treatment of Dr. Ashok Gupta (RW 9) as an out-door patient.

Dr. Ashok Gupta (RW 9) also states that Dr. Chauhan remained under this treatment for a disease known as 'Vertigo', the cause of which was mineor syndrom. He gave a prescription slip, Ex. R-10 to Dr. Chauhan and Dr. Sukh Ram Chauhan was not fit to move out of his house and remained continuously under his treatment from 31-12-1984 to 29-3-1985. He had been visiting Dr. Chauhan's house daily being a neighbour and a colleague.

Ex. P-9 is a saving gram issued by the General Secretary of the Bharatiya Janata Party to the Chief Election Commissioner of India, New Delhi on 4-3-1985 mentioning that Dr. Chauhan alongwith some others was openly campaigning for Congress (I) candidate in Kot Kehloor constituency and Ex. P-10 is its copy. Both these documents are not relevant to prove that there was a talk between Dr. Chauhan and respondent No. 1 on 12-2-1985.

Ex. P-4 is an order dated 23-11-1984 by which Dr. Chauhan was transferred from District Hospital Bilaspur to Primary Health Centre, Thana Kalan, District Una as B.M.O., and by an order Ex. P-5 dated 27-4-1985 this transfer was cancelled. Thus Ex. P-4 and Ex. P-5 only prove that Dr. Chauhan was ordered to be transferred in November, 1984 from District Bilaspur to District Una but subsequently in the end of April, 1985 this transfer order was cancelled. These documents also do not prove that there was any talk between Dr. Chauhan and respondent No. 1 on 12-2-1985.

Shri I. D. Sharma, Superintendent of Chief Medical Officer's Office, Bilaspur (PW 2) states that Dr. Chauhan did not join his duty in District Una in pursuance to the transfer orders (Ex. P-4) and he remained on medical leave with effect from 31-12-1984 to 31-3-1985. He states that he drew his salary from Civil Hospital Bilaspur during this medical leave period and finally resumed duty in Civil Hospital, Bilaspur on 1-4-1985. The fact that Dr. Chauhan remained in Bilaspur during the medical leave period could be a circumstance to prove that he was in a position to help respondent No. 1 during the elections, but the fact that Shri Chauhan and respondent No. 1 had a talk on 12-2-1985 is not proved.

The learned counsel for the petitioner further contended that Dr. Chauhan was, in fact, not ailing from any disease and was working and canvassing for respondent No. 1 and he tried to assail the statement of Dr. Ashok Gupta (RW 9) on the basis of a book entitled "Diseases of Nose, throat, neck and head, 13th Edition, 1985 by John Jacob Blanger published by M/s Lee of Dephia, U.S.A.". For the purposes of the present controversy, this is not relevant because the petitioner has failed to prove by cogent and reliable evidence that the alleged talk between Dr. Chauhan and respondent No. 1 took place on 12-2-1985. Whether Dr. Chauhan was capable of going out from his house for the purposes of canvassing is not material, if the petitioner fails to prove the positive allegations. The oral statements of S/Shri Manohar Lal (PW 10) and Ranjit Singh (PW 14) cannot be believed for the reasons that documentary evidence (which according to the petitioner's evidence was available) has not been produced and also that both Dr. Chauhan (RW 8) and respondent No. 1 (RW 6) deny the allegations. There is also no evidence to prove that the transfer orders, Ex. P-4 of Dr. Chauhan were cancelled at the instance or intervention of respondent No. 1. However, it is proved that Dr. Chauhan did not join at Una in pursuance to the transfer orders, (Ex. P-4) but remained at Bilaspur on medical leave and subsequently he joined at Bilaspur on 1-4-1985. The transfer orders were also cancelled later on Ex. P-5. These facts can only prove that Dr. Chauhan might have manipulated to get his

transfer order cancelled or stayed but these facts do not prove that he supported respondent No. 1 during the elections.

In view of the above discussion, it is held that the petitioner has not been able to prove that there was any talk between the respondent No. 1 and Dr. Chauhan on 12-2-1985 as has been alleged by the petitioner in paras 18 and 19 of the petition.

(b) Canvassing by Dr. Sukh Ram Chauhan on 24-2-1985:

It is alleged that canvassing was done on 24-2-1985 in villages of Damthal, Rehri, Jukhala, Asa Majhiari and Gasol and Dami area of the constituency. Shri Sunder Ram (PW 11) of Majhiari village states that respondent No. 1 alongwith Dr. Chauhan contacted him on 24-2-1985 and Dr. Chauhan requested him to vote for respondent No. 1. In para 18 of the petition, the petitioner has only given the name of Shri Dila Ram of Asa Majhiari village and has not mentioned the name of this witness and for this reason the statement of Shri Sunder Ram (PW 11) cannot be believed.

Shri Achharu Ram (PW 12) of village Panjatan states that Dr. Chauhan alongwith respondent No. 1 came to village Panjatan and contacted him and requested him to vote for respondent No. 1. The name of this witness of village Panjatan is not mentioned in para 18 of the petition. In these circumstances, the oral statement of this witness cannot be believed. The petitioner is required to prove the various allegations alongwith the particulars given in his petition. The petitioner has not produced any other witness named in para 18 of the petition and has also not produced any witness from the other villages mentioned in the petition to prove the allegations of canvassing by Dr. Chauhan alongwith respondent No. 1 on 24-2-1985.

Respondent No. 1 (RW 6) and Dr. Chauhan (RW 8) have denied these allegations in their statements.

In view of the above discussion it is held that the allegations regarding canvassing by Dr. Chauhan on 24-2-1985 with the consent of or in the presence of respondent No. 1 are not proved.

(c) Canvassing by Dr. Sukh Ram Chauhan on 3-3-1985 :

In para 19 of the petition, it is alleged that Dr. Chauhan canvassed in villages Chhakoh, Sora Beons, Doba, Porot, Sair, Ghorhi and Rani Kotla of the constituency. The petitioner has named many persons to whom canvassing was done by Dr. Chauhan.

The petitioner has produced S/Shri Paras Ram (PW 15) of Chhakoh village, Shri Balak Ram (PW 16) of village Sura Beons, and Shri Bara Ram (PW 13) of village Ghorhi, Kanshi

Ram (PW 17) of village Rani Kotla, Shri Lekh Ram (PW 18) of village Doba and Shri Kuldip Singh (PW 19) of Bilaspur to prove these allegations.

Shri Kuldip Singh (PW 19) has only proved the saving telegram issued by the Bharatiya Janata Party on 4-3-1985 in which it is mentioned that Dr. Chauhan was supporting respondent No. 1.

Shri Bara Ram (PW 13) states that Dr. Chauhan came to his house in village Ghorhi with respondent No. 1 on 3-3-1985 and requested him to vote for respondent No. 1. Dr. Chauhan and respondent No. 1 were accompanied by 2/3 other persons, but he does not know their names. In para 19 of the petition it is nowhere stated that Dr. Chauhan visited various villages in the presence of respondent No. 1. The statement of Bara Ram (PW 13) is thus not in accor-

dance with the pleadings. Further this witness in an illiterate person. He is unable to give the names of the months according to gregorian calendar but has specifically stated the dates of 3rd March, 1985 and 5th March, 1985. He could not give the names of the persons who had gathered at Jukhala polling station, where he had gone on 5-3-1985. It is totally unsafe to rely upon his oral statement.

Shri Paras Ram (PW 15) of village Chhakoh, states that Dr. Chauhan came to his house in village Chhakoh on 3-3-1985 with respondent No. 1 and requested him to vote for respondent No. 1. This witness does not know the residential village of Dr. Chauhan and also does not know if Dr. Chauhan and respondent No. 1 came in a jeep or any other vehicle. The oral statement of this witness also cannot be believed because there are no pleadings that Dr. Chauhan came with respondent No. 1 for canvassing.

Shri Balak Ram (PW 16) of village Nongli has also given a similar statement about the meeting and canvassing of Dr. Chauhan alongwith respondent No. 1, but the too could not give the names of other persons who were accompanying Dr. Chauhan. He admits that Daulat Ram, respondent No. 2 also contacted him on various dates, but he could not give these dates. The name of this witness also does not find mention in para 19 of the petition and so his oral statement cannot be believed. Shri Kanshi Ram (PW 17) of village Rani Kotla states that Dr. Chauhan alongwith respondent No. 1 came to his house. He could not give the month or dates when he was contacted by the petitioner. In para 19 of the petition, it is nowhere mentioned that the respondent No. 1 was accompanying Dr. Chauhan and for this reason his evidence cannot be believed.

Shri Lekh Ram (PW 18) of village Doba states that Dr. Chauhan came to meet him on 3-3-1985 alongwith respondent No. 1. He was a counting agent of the petitioner. The oral evidence of this witness cannot be believed in view of the reasons which have already been stated for disbelieving the other witnesses.

S/Shri Shunka Ram (RW 14), Sukh Ram Kaushal (RW 15), Shesh Ram (RW 16), of village Gorhi, Babu Ram (RW 22) of village Panjatan, Om Parkash (RW 17) of village Gasor and Krishan Singh (RW 22) of village Chhakoh, stat: that they never saw Dr. Chauhan in these villages during the election days canvassing for respondent No. 1. Respondent No. 1 has also produced some evidence to prove that he was at Naina Devi on 2-3-1985 in order to prove that it was not possible for him to do any canvassing on 3-3-1985 because the Prime Minister of India was to address a public meeting at Bilaspur on 3-3-1985. This fact is not pleaded in the written statement.

Respondent No. 1 (RW 6) and Dr. Chauhan (RW 8) have denied the allegations.

In view of the evidence discussed above it is held that the petitioner has failed to prove the various allegations of canvassing on 3-3-1985.

As a result of the above discussion, it is held that the petitioner has failed to prove the allegations of paras 18 and 19 of the petition and issue No. 4 is accordingly decided against the petitioner.

Issue No. 5:

The learned counsel f or the petitioner did not press this issue seriously.

In paras 15 to 17 of the petition it is stated that at the time of the counting of votes grave irregularities, illegalities and procedural mis-deeds were performed by the counting staff and counting agents of respondent No. 1 as a result of which validly polled votes in favour of the peti-

tioner were declared invalid while invalid votes cast in favour of respondent No. 1 were declared valid. A request for re-count was made and the returning officer was asked to wait for the declaration of the results. The returning officer, however, declared the result without conceding to the request for a recount. The petitioner alleges that the counting was improper and illegal and during the counting the supporters of respondent No. 1 with the help and connivance of the election and counting staff switched off the electric lights and mixed the bundles of votes. The supporters of respondent No. 1 also started fire in the premises of the counting hall and the counting was done in a secretive and dishonest manner. These allegations are verified by the petitioner from his knowledge.

The petitioner (PW 1) states that his requests and objections were turned down and some papers were burnt on one corner of the counting hall by the supporters of respondent No. 1. He also states that a request for re-count and for giving time to file an application for recount was also not accepted by the returning officer.

Shri Lekh Ram (PW 18) states that the electricity lights went off twice during the counting and there was a fire in a corner of a hall and bundles of votes were mixed up.

This witness was a counting agent of the petitioner and admits that he did not bring any irregularities or illegalities to the notice of the counting supervisor and the fire in a corner of the hall was due to burning of some cloth. The witness being a counting agent is interested in the petitioner but did not raise any objection in writing to the returning officer at the appropriate time. His oral statement therefore cannot be believed.

Shri Kartar Singh Gill (PW 20) states that twice the lights went off during the counting of votes and at one time there was fire possibly of papers in the verandah on one corner of the counting hall. He informed the petitioner regarding the irregularities, but in the mean time the results had been declared.

This witness was also a counting agent of the petitioner and was working for him. He belongs to Communist Party of India and states that he did not make a written complaint. He is highly interested in the petitioner and for this reason his oral statement cannot be believed.

No other oral or documentary evidence has been produced by the petitioner.

Shri S. Gupta (RW 3) was Executive Engineer at the relevant time. He states that no complaint regarding break down of electricity was lodged in his office on 6-3-1985.

Shri K. L. Bekta, Tehsildar Palampur (RW 4) was present in the counting hall during the counting. He states that there was no electricity failure during the counting on 6-3-1985 but admits that he was not sitting in the counting hall and was sitting in an adjoining room.

Shri S. L. Mahajan (RW 5) was the counting supervisor. He states that the counting was done according to the procedure and no objections were raised during the counting. There was also no electricity failure.

Respondent No. 1 (RW 6) also states that no irregularity or illegality was done during the counting process and that there was no electricity failure on 6-3-1985.

Shri Ram Saran Advocate (RW 10) was counting agent of respondent No. 1 and he states that no irregularity was committed during the counting process and there was no electricity failure. Shri Banarsi Dass (RW 19) was counting agent of respondent No. 1 and he states that there was no electricity failure on 6-3-1985, and no fire broke out in any corner of the counting hall.

After appreciating the evidence, I find that the petitioner has failed to prove the allegations of paras 15 to 17 of the petition. The petitioner's oral evidence is highly interested and cannot be believed specially in view of the fact that documentary evidence could be produced.

In view of the above discussion, it is held that the petitioner has failed to prove issue No. 5, which is decided against the petitioner.

Issue No. 6:

As issues Nos. 2 and 5 have not been proved, therefore, this issue is decided against the petitioner.

Issue No. 7 in E.P. 8/85 and Issue No. 2 in E.P. 9/85:

As a result of my findings on various issues both election petition No. 8 of 1985 (Krishan Kumar Kaushal versus Ram Lal Thakur and others) and election petition No. 9 of 1985 (Dila Ram versus Ram Lal Thakur and others) are dismissed. Respondent No. 1 will be entitled to costs incurred by him in election petition No. 8 of 1985 from Shri Krishan Kumar Kaushal petitioner and the costs incurred by him in election petition No. 9 of 1985 from Shri Dila Ram petitioner. It is directed that the substance of this decision be communicated to the Election Commission and the Speaker of Himachal Pradesh State Legislative Assembly forthwith. An authenticated copy of the decision be also sent to the Election Commission at the earliest.

Sd/-

V. P. GUPTA, J.

August 4, 1986.

Copy of judgement/order/statement delivered/passed/recorded on 20-6-85 by the Hon'ble Mr. Justice V. P. Gupta, J. in Election Petition No. 8/85.

Shri Krishan Kumar Kaushal,
Advocate, Bilaspur, District Bilaspur (H.P.)

.. Petitioner.

Versus

1. Shri Ram Lal Thakur, M.L.A.
presently Minister of State for Law and Sports, Government of Himachal Pradesh,
Shimla-171 002.
2. Shri Daulat Ram Sharma s/o Shri Budhi Ram, resident of Jirakh, P. O. Dhar, Tehsil
Sadar, District Bilaspur (H. P.) .. Respondent.

COPY OF JUDGEMENT/ORDER/STATEMENT

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-1

Election Petition No. 8 of 1985

Present: Shri Om Parkash Counsel for the petitioner.
Shri Indar Singh counsel for respondent No. 1.

This election petition has been filed on behalf of the petitioner under sections 81, 84, 100 and 101 of the Representation of People Act, 1951 (hereinafter the Act) with a prayer that the election of respondent No. 1 who contested the election from 20—Kot Kehloor constituency of the Himachal Pradesh Legislative Assembly, held in March, 1985, be declared to be void and the petitioner be declared to be elected from this constituency.

Besides many other allegations, the petitioner has alleged that the nomination papers of Shri Bachittar Singh who wanted to contest the election, were improperly rejected. The petitioner has further alleged some corrupt practices alleged to have been committed by respondent No. 1

or his agents or by some other persons with the consent of respondent No. 1. Another allegation is that the counting of the votes was improper and some of the votes were improperly received, refused or rejected or the votes which were received were void.

Reply to the petition was filed on behalf of respondent No. 1 and he has seriously contested the election petition or some legal and technical objections as well as on merits. Respondent No. 2 was also a candidate during the election, but he has supported the petitioner and has filed a written statement admitting the petitioner's claim.

As respondent No. 1 is the real contestant and he has raised preliminary objections with respect to the maintainability of the election petition, therefore, the following preliminary issues were framed on 29-5-1985:—

1. Whether the affidavit filed by the petitioner in the prescribed form in support of the allegations of corrupt practices and the particulars thereof is defective? If so, its effect? OPR-1.
2. Whether the election petition does not contain concise statement of the material facts on which the petitioner is claiming the relief as alleged? OPR-1.
3. Whether full particulars of the corrupt practices alleged by the petitioner, as are required under section 83(1) (b), have not been given by the petitioner? If so, its effect. OPR-1.
4. Relief.

Before dealing with issue No. 2, it will be appropriate to deal with issue Nos. 1 and 3 because both the parties admit that the defects as pointed out by respondent No. 1 which are covered under issues Nos. 1 and 3 can be cured with the permission of the court. In these circumstances, presently I am deciding issue No. 1 and 3 only.

Issue No. 3:

Shri Indar Singh, the learned counsel appearing on behalf of respondent No. 1, has pointed out that the names and description etc. of the supporters of the petitioner and respondent No. 1 have not been mentioned in para 13 of the petition and these particulars should have been supplied by the petitioner. He further contends that the names of various voters who reached the polling station after the alleged capturing of the booth by respondent No. 1 or his supporters have not been mentioned and it is also not stated as to how and in what manner and by whom such voters were forcibly made to vote for respondent No. 1.

Similarly, he contends that the name of the person who is alleged to have been stabbed by the supporters of respondent No. 1 should also have been mentioned along with the names of the supporters of respondent No. 1 to whom this act of aggression is alleged. He also contends that the names of the voters upon whom the undue influence was exercised by respondent No. 1 or his supporters should also have been disclosed in this para. He next contends that in para 18 of the petition the date and place when talk between Dr. Chauhan and respondent No. 1 took place should have been mentioned and the persons/person in whose presence such a talk took place should also have been mentioned.

Regarding para 19 of the petition he contends that the names of the villagers who were approached by Dr. Chauhan and to whom Dr. Chauhan had conversed to vote in favour of respondent No. 1 should have been disclosed.

Mr. O. P. Sharma appearing on behalf of the petitioner states that the original petition as filed gives full particulars of the corrupt practices and the further particulars which are sought by the learned counsel for the respondent No. 1 are not required to be given under the provisions of section 83 of the Act. In any case he states that he is willing to supply the various particulars as are required by the counsel for respondent No. 1, as far as possible, and that he may be allowed time to file such further particulars which are available to the petitioner. In view of the fact that the learned counsel for the petitioner has agreed to supply further particulars which may be possible for him to supply, it is agreed between the learned counsel for the parties that the petitioner may be allowed time to file such further particulars.

As further particulars are to be supplied by the petitioner in terms of section 83(1)(b) of the Act, therefore, it is ordered that the petitioner may supply these particulars by filing an amended petition within a period of ten days from today. The election petition is to be supported by an affidavit, therefore, the petitioner is further directed to file an affidavit in support of the amended petition. It is made clear that the aforesaid amendment of the petition is allowed to the extent as has been stated in the order and the petitioner shall only supply further particulars which have been suggested by the learned counsel for respondent No. 1. The learned counsel for respondent No. 1 shall be entitled to file a reply to this amended petition but the aforesaid amended reply can only be limited to the extent of the amendment and no new objections/facts can be introduced. The reply may be filed within a week thereafter.

In view of the above discussion, no decision is called for on Issue No. 3.

Issue No. 1:

As the further particulars of the corrupt practices are to be supplied by the petitioner and a fresh affidavit is to be filed on behalf of the petitioner, therefore, the learned counsel for the petitioner is also permitted to file a supplementary fresh affidavit in support of the amended petition which will also include the allegations of the original petition. Under issue No. 1 the learned counsel for the petitioner contends that the affidavit which had been filed by him is in accordance with rule 94 of the Conduct of Election Rules in the prescribed form No. 25. Shri Indar Singh, the learned counsel for respondent No. 1 has shown the High Court Rules and Orders Vol. V in which it is stated that the affidavit should also disclose the source of information. In 1972 S.C.C. (L) 826, *Virendra Kumar Saklecha versus Jagjiwan and others* it was held that the High Court Rules are not inconsistent with the form of affidavit as given in the Conduct of Election Rules. Without conceding the fact that an affidavit in accordance with the High Court Rules and Orders is required to be filed, the learned counsel for the petitioner has agreed to file the fresh affidavit in which he would also disclose the source of information as is required under the High Court Rules.

In view of the above discussion no finding is required to be given on issue No. 1 also.

Arguments have been partly heard on issue No. 2. The case be listed for remaining arguments on issue No. 2 on 21-6-1985.

June 20, 1985(K).

Sd/-
V. P. GUPTA, J.

July 4, 1985

V. P. GUPTA, J.

The petitioner has filed this election petition under sections 81, 84, 100 and 101 of the Representation of People Act, 1951 (hereinafter the Act) challenging the election of Shri Ram Lal Thakur (hereinafter respondent No. 1), and claiming that the said election be declared void and

the petitioner be declared to be duly elected from 20—Kot Kehloor Constituency of Himachal Pradesh Legislative Assembly.

Briefly, the facts of the case are that elections to the Himachal Pradesh Legislative Assembly were held on 5-3-1985. The date of polling for 20—Kot Kehloor Constituency was 5-3-1985 and the dates for filing the nomination papers and for scrutiny and acceptance/rejection were 8-2-1985 and 9-2-1985 respectively. The results were to be declared after counting on 6-3-1985.

The petitioner alleges that he contested the election for 20—Kot Kehloor Constituency as a nominee of Communist Party of India. The respondent No. 1 and respondent No. 2, Shri Daulat Ram contested the election as nominees of Congress (I) and Bhartiya Janata Party respectively. Respondent No. 1 was declared elected and the security of respondent No. 2 was forfeited.

It is alleged that Shri Bachittar Singh filed his nomination papers from 23—Gherwin (reserved) Constituency and 20—Kot Kehloor Constituency. Both these constituencies are adjacent and are situate in Bilaspur district. The nomination papers of Shri Bachittar Singh for 20—Kot Kehloor Constituency were rejected improperly and for this reason the entire election stands vitiated.

Another allegation is that two notified polling stations were illegally shifted to benefit the prospects of respondent No. 1 and to cause harm to the petitioner. The change in the polling station was un-authorised and illegal.

The third allegation is that on the polling day immediately before the start of the polling, supporters of respondent No. 1 with the prior consent of respondent No. 1 attacked the supporters of the petitioner and created a terror amongst the voters. The supporters of respondent No. 1 captured the booth, which fact was duly reported. Further false rumours were spread that the supporters of the petitioner had stabbed some supporter of respondent No. 1, who could die at any moment and with such false rumours the result of the election has been materially affected in favour of respondent No. 1.

It is further alleged that at the time of the counting of votes some validly polled votes in favour of the petitioner were declared invalid whereas many invalid votes cast in favour of respondent No. 1 were declared valid inspite of protests against counting and request for re-counting was not allowed. The method of counting is also challenged and it is alleged that the counting was illegal and dishonest to favour respondent No. 1.

The next allegation is that Dr. Sukh Ram Chauhan, holding a gazetted post canvassed for respondent No. 1 in different villages from house to house at the instance of respondent No. 1.

On these allegations, it is alleged that the respondent No. 1 indulged in corrupt practices and had acted in violation of the Act and Rules. Due to non-complying with the provisions of the Act and the Conduct of Election Rules, the election of respondent No. 1 is void and illegal.

Respondent No. 2 in his written statement has supported the allegations of the petitioner.

Respondent No. 1 contested the petition and denied the various allegations of illegalities, irregularities and the corrupt practices. He also raised preliminary objections regarding the form of affidavit and the maintainability of the petition.

On the pleadings of the parties, the following preliminary issues were framed on 29-5-1985:—

1. Whether the affidavit filed by the petitioner in the prescribed form in support of

- the allegations of corrupt practices and the particulars thereof is defective? If so, its effect? O.P.R-1.
2. Whether the election petition does not contain concise statement of the material facts on which the petitioner is claiming the relief, as alleged? O.P.R-1.
 3. Whether full particulars of the corrupt practices alleged by the petitioner, as are required under section 83(1)(a), have not been given by the petitioner? If so, its effect? O.P.R-1.
 4. Relief.

Issue Nos. 1 and 3 were decided by my order dated 20-6-1985. Now I proceed to decide Issue No. 2.

The learned counsel for the respondent No. 1 contends that the petition does not contain a concise statement of material facts upon which the petitioner relies, because he has not narrated the material facts for:

- (a) wrongful rejection of the nomination papers of Shri Bachittar Singh,
- (b) the corrupt practices alleged under section 123(2) of the Act,
- (c) the corrupt practices alleged under section 123(7)(a) of the Act, and
- (d) illegalities and irregularities in counting.

It is contended that the petition should be dismissed. The learned counsel for the petitioner, however, contends that all the material facts have been stated in the petition.

I have considered the contentions and have gone through the records of the case.

The present case pertains to the interpretation of section 83(1)(a) of the Act, which reads as follows:—

“83. Contents of petition.—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;”

For the purposes of finding out as to what are the material facts as stated in section 83(1)(a), it is relevant to refer to some observations made in the A.I.R. 1976 S.C. 744 (*Udhav Singh versus M.R. Scindia*) and 1982 (3) S.C.C. 487, (*Roop Lal Sathi versus Nachhattar Singh Gill*).

In *Udhav Singh versus M.R. Scindia*, (supra), Shri Udhav Singh was an elector of the constituency. He filed an election petition challenging the election of Shri M. R. Scindia. There were two main grounds in the petition, that is,—

- (1) That the respondent (Madhav Raj Scindia) and/or his election agent had incurred or authorised to incur expenditure in connection with the election in excess of the limit of Rs. 35,000/- prescribed under section 73(3) of the Act read with Rule 90 of the Conduct of Election Rules, 1961. It was alleged that the respondent made a tour in the Constituency by helicopters and showed Rs. 5,000/- only as an expense towards the cost of the aviation fuel but did not show the hiring and other charges in respect thereof. It was further alleged that the respondent hired and used motor vehicles, not less than 18, but did not show the expenditure incurred in respect thereof in the statement of election expenses submitted by him to the Election Commission.
- (2) That the workers of the respondent, with his consent, had threatened the electors with bodily injuries and criminally intimidated them not to vote for Shri Deorao

Krishnarao Jadhav, the Congress candidate. Five instances of such threats and intimidation interfering with the free exercise of electoral rights, were set out in clauses (i) to (v) of the original Paragraph 10(III) of the petition which after amendment, was renumbered as para II(iv). Clause (iv) of paragraph 11 was as follows:—

“That on or before 22-2-1971, Shri Mohan Prasad Ojha, a Congress worker of village Umri (Tehsil Guna) was threatened at pistol point by the workers of the respondent with his consent, Shri Shiv Pratap Singh and others of Umri threatened not to vote and convass in favour of the Congress candidate, Deorao Krishnarao Jadhav and threatening with dire consequences.”

The respondent denied these allegations.

The election petition was dismissed by the High Court of Madhya Pradesh and the appellant filed an appeal in the Supreme Court. While dealing with the question as to what is a concise statement of material facts as mentioned in section 83(1) (a), the learned Judges have observed as follows in paras 38 and 40 of the judgment:—

“All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are ‘material facts’. In the context of charge of corrupt practice ‘material facts’ would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are ‘material facts’ which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of section 83(1)(a).”

The learned Judges pointed out the distinction between the material facts and material particulars and after perusal of para 11(4) of the petition, it was held that all the material facts constitute complete charge of corrupt practice within the meaning of section 123(2) against Shri Shiv Pratap Singh, who was a candidate at the election.

Similarly, in 1982(3) S.C.C. 487 (*Roop Lal Sathi versus Nachhattar Singh Gill*), it was held that the words ‘material facts’ mean the facts necessary to formulate a complete cause of action and that such a question has to be decided on a consideration of the averments in the election petition alone. The learned Judges have held that the words ‘material facts’ under section 83 of the Act mean facts necessary for the purpose of formulating the complete of action and if any one material fact is omitted the statement or plaintis bad, it is liable to be struck out. The function of particulars is quite different. The use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the returned candidate. Their function is to fill in the picture of the election petitioner’s cause of action with information sufficiently detailed to put the returned candidate on his guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt practice.

In view of the observations of the Supreme Court at this preliminary stage, the only point for consideration is as to whether the petitioner has given a concise statement of material facts, which are sufficient to establish the existence of a cause of action, i.e., whether the petitioner has narrated all such facts for a complete cause of action.

[In the present petition, in para-4, the petitioner has stated that Shri Bachittar Singh filed

his nomination papers from two different constituencies and both these constituencies are adjacent and are situate in District Bilaspur.

In para 5, it is stated that Shri K. Lal, I.A.S., Deputy Commissioner, Bilaspur was the Returning Officer in four constituencies of District Bilaspur including the aforesaid two constituencies.

In para 6 it is stated that in all the four constituencies of District Bilaspur the dates for filing the nomination papers, scrutiny and polling were the same.

In para 7, it is stated that Shri Bachittar Singh filed his nomination papers from two constituencies, namely, 20—Kot Kehloor and 23—Gherwin (S.C.). The nomination papers were rejected because he had not produced the copy of the electoral rolls of the relevant part of 23—Gherwin (S.C.) Assembly Constituency as required under section 33(5) of the Act.

In para 8, it is stated that Shri Bachittar Singh requested the Returning Officer to verify the fact of his being entered at serial No. 719 of part 49 of 23—Gherwin Assembly Constituency. Shankar Singh was the authorised person present on behalf of the petitioner at the time of scrutiny in addition to Shri Bachittar Singh and others. The Returning Officer refused to concede to this request and informed that he was not required or bound to look into the electoral rolls though the same were lying on his table. Shri Bachittar Singh also requested for grant of time till next day or even for some hours but this request was also not accepted by the Returning Officer.

In para 9, it is stated that the rejection of the nomination papers of Shri Bachittar Singh was illegal and void and with this improper rejection the entire election stands vitiated.]

From these averments, it is proved that all the primary facts which are required to be proved at the trial by the petitioner to establish the existence of a cause of action have been mentioned in the petition. These can be the only material facts and no further material facts could possibly be supplied by the petitioner.

In view of the averments made in the petition, the objection of respondent No. 1 that material facts for wrongful rejection of papers of Shri Bachittar Singh have not been mentioned is not sustainable.

The Id. counsel for respondent No. 1 during the course of arguments relied upon A.I.R. 1954 S.C. 510 (*Rattan Anmol Singh versus Ch. Atma Ram*), A.I.R. 1959 S.C. 93 (*Shri Babu Ram versus Smt. Prasanni*), A.I.R. 1969 S.C. 395 (*Narbada Prasad versus Chhanganlal*), A.I.R. 1974, S.C. 951, (*P.H. Jugat Singh versus P.H. Narsibhai*), A.I.R. 1979 S.C. 1148, (*Avadh Raj Singh versus Jugat Kishore Gupta*), (1971) 29 Election Law Reports, 108, (*Shri Khyali Ram versus Shri Harial Singh*), and A.I.R. 1978, Delhi 199 (*Bharat Bhushan versus Ved Prakash*). All these cases were decided on merits and were not decided at a preliminary stage for deciding the question as to whether a concise statement of material facts as required under section 83 of the Act, had been given in the petition or not. Hence, these judgments relied upon by the Id. counsel for respondent No. 1 are not relevant and are distinguishable at the present stage because this Court is not adjudicating on the merits of the case and is not deciding the issue as to whether the rejection of the nomination papers of Shri Bachittar Singh was valid or invalid. It is, therefore, held that the averments made in paras 4 to 9 of the petition do contain a concise statement of material facts upon which the petitioner relies for getting the relief on the grounds of wrongful rejection of the nomination papers of Shri Bachittar Singh.

[Similarly, in para-10 of the petition, the petitioner has stated that the notified polling station 56—Chilag was notified to be housed at Panchayat Ghar, Suin Surar, but it was

unauthorisedly and illegally shifted to Government Middle School, Suin Surar with the result that the petitioners-voters could not vote for the petitioner due to change in the polling station. The Government Middle School, Suin Surar was already notified polling station named as Suin Polling Station for other villages.

In para-11, the petitioner has alleged that 58 Sayer Polling Station was notified to be housed at Government Primary School, Sayer, but the same was unauthorisedly and illegally shifted to Private Bhawan Sayer Sarai and this illegal and unauthorised shifting had materially affected prejudicially the election prospects of the petitioner.

In para 12, it is alleged that Shri Shankar Singh, the real brother of respondent No. 1 was working as an election assistant and the above two polling stations were shifted at the behest and asking of Shri Shankar Singh to the prejudice of the petitioner. Many voters when approached by respondent No. 1 to vote for him categorically told respondent No. 1 to get the polling station changed so that they could conveniently accede to the request of respondent No. 1.]

The contention of the learned counsel for respondent No. 1 is that the petitioner has not mentioned the period when the polling stations were changed, that is, as to whether the same were changed during the election period or not. He further contends that even the loss of various votes as stated in the election petition cannot materially affect the election.

In para 10, the petitioner has stated that the shifting has materially prejudiced the election prospects of the petitioner and enhanced the prospects of respondent No. 1. He has mentioned the number of votes which would have been polled in his favour.

In para 11 also, it is stated that the unauthorised and illegal shifting has materially and prejudicially affected his election prospects and has advanced the election prospects of respondent No. 1 and the result of the election has been materially prejudiced and affected. He has also given the number of votes which he could poll in excess.

In para 12, the petitioner has alleged that this un-authorised and illegal shifting of the polling stations was done at the behest and asking of Shri Shankar Singh in order to help respondent No. 1.

This petition relates to the election held on 5-3-1985 and in para No. 1 different dates of the schedule for the election are mentioned. It is admitted that the election proceedings started on 1-2-1985. The petitioner's allegations regarding unauthorised, illegal and improper change in polling stations can only pertain to the present elections. In these circumstances, the contention of the ld. counsel for respondent No. 1 cannot be accepted and a reading of the various paras 1, 10, 11 and 12 clearly proves that the petitioner has given all the material facts on which he relies. The allegation that the result of the election has been materially affected is also evident from the various averments in these paragraphs.

The learned counsel for respondent No. 1 relied upon 1969, S.C. 1201 (*Samant N. Balakrishna etc. versus George Fernandez and others etc.*), in support of his contentions. This judgment does not in any way help the respondent No. 1 in para 29 of the judgment, it is observed as follows:—

“Section 83 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. This Section

is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is different between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts, thus, will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts, it will not do merely to quote the word of the Section because then the efficacy of the words 'material facts' will be lost. The fact which constitute the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practices. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly, the petition used to be in two parts. The material facts have to be included in the petition and the particulars in schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule, but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of section 86 although the penalty of dismissal is taken away."

The petitioner has, in fact, narrated all the material facts in paras 1, 10, 11 and 12 of the petition, which are sufficient to disclose a complete cause of action challenging the election of respondent No. 1 on the ground of corrupt practices alleged under section 123(2) of the Act.

It is next contended by the ld. counsel for respondent No. 1 that the petitioner has not alleged that the false rumours were spread which the respondent No. 1 knew to be false. He relies upon section 123(4) of the Act for this purpose. The learned counsel for the petitioner, however, contends that he does not rely upon the provisions of section 123(4) of the Act, but relies upon the provisions of section 123(2) of the Act. He has drawn my attention to the contents of para 13 and 14 and to the affidavit dated 19-4-1985 filed on behalf of the petitioner.

In my opinion, a detailed statement of the material facts upon which the petitioner relies for proof of the corrupt practices of undue influence mentioned in section 123(2) of the Act has been given in these paras. Knowledge of respondent No. 1 is not necessary because the relevant portions of section 123 read as follows:—

"123. *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1)	x	x	x	x	x	x
-----	---	---	---	---	---	---

- (2) Undue influence, that is to say, any direct interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that—

- (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—
- threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or
 - induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure.

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause:

- (b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) x	x	x	x	x	x	x	x	x
(4) x	x	x	x	x	x	x	x	x
(5) x	x	x	x	x	x	x	x	x
(6) x	x	x	x	x	x	x	x	x

- (7) The obtaining or procuring or, abetting or attempting to obtain or procure by a candidate or his agent or, by any other person (with the consent of a candidate or his election agent), any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

- gazetted officers;
- stipendiary judges and magistrates;
- members of the armed forces of the Union;
- members of the police forces;
- excise officers;
- revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and
- such other class of persons in the service of the Government as may be prescribed:

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent, (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

Explanation.—(1) In this section the expression 'agent' includes an election agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

(3) For the purposes of clause (7) notwithstanding anything contained in any other law, the publication in the official gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union Territory) or of a State Government shall be conclusive proof—

- (i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and
- (ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date."

[In para 13, it is alleged that at polling station No. 20/36-Patta, S/Shri Suman Kumar, Sher Ali, Zulfikar Ali Bhutto, and Mangal Dass supporters of the petitioner had set up their booth at an appropriate place near the polling station. Immediately before the start of polling, supporters of respondent No. 1 numbering about 10/12 headed by Shri Amar Singh Sankhyan, resident of Patta with the prior consent of respondent No. 1 attacked the booth of the petitioner and gave beatings to the supporters of the petitioner. By this attack a wave of terror spread amongst the voters and supporters of the petitioner and they fled in terror with the result that they could not exercise their franchise. Those voters who some-how reached the polling station were forcibly made to vote for respondent No. 1. The matter of booth capturing was reported by a telegram (Annexure PD) as well as a report (Annexure PE).

In para 14, it is stated that respondent No. 1 falsely and to save his skin from the above noted booth capturing spread false news that the supporters of the petitioner had stabbed his supporter whose condition was serious and who could die any moment. Respondent No. 1 also sent his supporters throughout the constituency as he himself visited polling stations Namhol, Palog, Kotla, Sinhla, Gasaur, Rani Kotla, Sayer and Dhar Tatoh immediately after capturing of the booth. It is alleged that due to false spreading of the news by respondent No. 1 and his supporters the result of the election was materially affected. The names of the persons in whose presence this false rumour was spread have also been given. It is further alleged that respondent No. 1 himself spread this rumour at Sayer polling station and the same was with the ulterior motive of prejudicing the prospects of the result of election of the petitioner, the respondent No. 1 and his supporters induced the voters not to vote for murderers.]

Thus, the petitioner has stated all the material facts in paras 13 and 14 of his petition for the purposes of challenging the election of respondent No. 1 under section 123(2) of the Act and the objection of the learned counsel for respondent No. 1 cannot survive.

It is then contended by the Id. counsel for respondent No. 1 that the dates and places of approach and the names of the persons in whose presence the talks or the canvassing took place have not been mentioned in the petition and the material facts for the purpose of section 123(7) (a) have not been narrated.

[In para 18 the petitioner has stated that Dr. Sukh Ram Chauhan was holding a gazetted post and was posted in Civil Hospital, Bilaspur. He was under transfer from Bilaspur to a remote area in January, 1985. He did not join his new place and was trying to get the transfer cancelled. He approached respondent No. 1 who asked him to work for him (respondent No. 1) in the constituency and after the election he would try to get his transfer cancelled. Both Dr. Chauhan and respondent No. 1 campaigned in Dami area and canvassed in different villages from house to house on February, 1985. In village Gasaur they met some persons whose names have been mentioned. It is also alleged that respondent No. 1 and Dr. Chauhan went to village Dhamthal and canvassed Khazana Ram and others. At village, Riri both of them canvassed Munshi Ram

and others. At village Jukhala they canvassed the villagers and names of some villagers have been given.

In para 19 it is alleged that Dr. Chauhan canvassed on 3-3-1985 in villages Chhakoh and Sora Buins and met various persons. The names of two persons have been given. He canvassed the villagers to vote for respondent No. 1. This matter was reported to the Election Commissioner and the Deputy Commissioner, Bilaspur during election.]

To my mind, these details are sufficient for being a concise statement of material facts. The whole evidence is not to be reproduced in the petition while giving a concise statement of material facts and the sole purpose is of making a complete cause of action. From paras 18 and 19 of the petition, I find that a complete cause of action has been brought out by the petitioner for the purpose of section 123(7) (a) of the Act and the objection of the learned counsel for the respondent No. 1 cannot survive.

[In para 15, the petitioner states that irregularities, illegalities and procedural misdeeds were performed by counting staff and counting agent of respondent No. 1 with the result that the number of validly polled votes in favour of the petitioner were declared invalid, whereas many invalid votes which were cast in favour of respondent No. 1, were declared valid inspite of the protests by the petitioner and his counting agent. A request for re-counting was made to the Returning Officer, but he declared the result immediately without waiting and giving time to the petitioner inspite of the petitioner's and his counting agent's request. The counting was done in a secretive manner and the agents of the petitioner could not verify the votes. The votes of the petitioner were mixed with bundles of the votes of the respondent No. 1. The results were declared when final counting slips from five tables had not been received. Protests were made by many persons and names of some of them have been given in this para. All the requests and protests were rejected.

In para 16, it is stated that counting was not started seriatim-wise that is, constituency No. 20, 21, 22, 23 and so on. To give undue advantage to respondent No. 1, the counting 20—Kot-Kehloor constituency was taken last of all. The supporters of respondent No. 1 with an active connivance and help of the election and counting staff, switched off the electric connections and bundles of votes were inter-mixed to help respondent No. 1. It is also alleged that the supporters of respondent No. 1 started fire in the premises of the counting hall to divert the attention and to create fear and tension in the minds of counting agent of the petitioner and in order to do the mischief of inter-mingling of bundles.

In para 17, it is alleged that counting of the votes had not been done properly and honestly and for imparting justice, a re-count was essential.]

The statements in paras 15 to 17, if read together, clearly suggest that the petitioner has alleged that due to illegal or irregular counting the result of the election has been materially affected. Under Section 83 (1) (a) of the Act, the petition should contain a concise statement of the material facts on which the petitioner relies and to my mind, the petitioner has given all the material facts for a complete cause of action. The petitioner has also mentioned that this irregular and illegal counting was done to help respondent No. 1 and if re-counting had been ordered or is ordered, then in that case the petitioner can have majority of votes.

Hence the objection of the learned counsel for respondent No. 1 that material facts regarding illegalities and irregularities in counting have not been given cannot be accepted.

As a result of the above discussion, issue No. 2 is decided against respondent No. 1.

Now, the case be listed on July 18, 1985 for further proceedings.

July 4, 1985.

Attested

Sd/-

Superintendent (Judicial)

High Court of Himachal Pradesh.

(Seal)

Sd/-

V. P. GUPTA, J.